

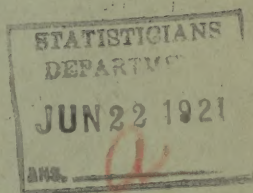
REVISION OF 1919

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STATE OF MICHIGAN

LAWS RELATING TO THE

Registration of Births, Deaths and Marriages; the Licensing and Solemnizing of Marriages, and Laws Concerning Divorce.

COMPILED UNDER THE SUPERVISION OF
COLEMAN C. VAUGHAN
SECRETARY OF STATE



BY AUTHORITY

FORT WAYNE PRINTING COMPANY
CONTRACTORS FOR MICHIGAN STATE PRINTING AND BINDING
FORT WAYNE INDIANA
1920

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NOTE—The number in parentheses, (), are compiler's sections and are consecutive throughout the book. The section mark § refers to the section of the compiled laws of 1915. The notes used refer to the compiler's sections unless otherwise specified. Abbreviations used are Am., amended; C. L., compiled laws and P. A., public acts. The character / is used in citing Michigan cases, to avoid the repetition of Mich. The annotations in this compilation include supreme court decisions to and including the 201st Michigan report.



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REVISION OF 1919

Births, Deaths and Marriages—Marriage
and Divorce.

REGISTRATION OF BIRTHS.

An Act to provide for the immediate registration of births and the
requiring of certificates of births.

[Act 330, P. A. 1905.]

The People of the State of Michigan enact:

- (1) § 5613. SECTION 1. All births that occur in the state shall be immediately registered in the districts where they occur, which primary registration districts shall be the same as those provided for the registration of deaths by act number two hundred seventeen of the public acts of eighteen hundred ninety-seven, as amended by acts numbers twenty and two hundred nine of the public acts of nineteen hundred one. Local registrars for deaths shall also be local registrars for births, and the secretary of state shall be the state registrar for births, as for deaths. Village and city registrars shall, immediately after qualification, designate deputy registrars to act in case of their illness or absence. It shall be the duty of the attending physician, or in the absence of an attending physician, of any other person who shall gratuitously or for hire, deliver a woman of child, or attend a woman in childbirth, to file a certificate of birth, properly and completely filled out with all the particulars required by this act, with the local registrar in the district in which the birth occurred, within five days after the date of birth. And if there be no physician or other person, as above defined, in attendance, then it shall be the duty of the father of the child, householder, manager or superintendent of public or private institution, or other competent person having cognizance of the facts, to file said certificate of birth with the registrar within five days after birth.
- (2) § 5614. SEC. 2. The certificate of birth shall contain the following items:
- Registration districts.
- Local registrars.
- Deputy registrars.
Duty of physicians, etc.
- When duty of father, etc.
- Certificate of birth, what to contain.

First, Place of birth, including state, county, township, village or city. If in a city, the ward, street and house number. If in a hospital or other institution, the name of the same to be given instead of the street and house number;

Second, Full name of child. If the child dies without a name before the certificate is filed, then the words "died unnamed" shall be entered. If the living child has not been named at the date of filing the certificate of birth, the space for "Full name of child" is to be left blank, to be filled out subsequently by a special return of given name of child as hereinafter provided;

Third, Sex of child;

Fourth, Whether a twin, triplet or other plural birth. A separate certificate shall be required for each child in case of plural birth;

Fifth, Whether legitimate or illegitimate;

Sixth, Full name of father;

Seventh, Residence of father;

Eighth, Color or race of father;

Ninth, Birthplace of father;

Tenth, Age of father at last birthday, in years;

Eleventh, Occupation of father;

Twelfth, Maiden name of mother in full;

Thirteenth, Residence of mother;

Fourteenth, Color or race of mother;

Fifteenth, Birthplace of mother;

Sixteenth, Age of mother at last birthday, in years;

Seventeenth, Occupation of mother;

Eighteenth, Number of child of this mother;

Nineteenth, Number of children of this mother now living;

Twentieth, Certificate of attending physician or in the absence of an attending physician of any other person who shall either gratuitously or for hire, deliver a woman of child or attend a woman in childbirth as to attendance at birth, including statement of year, month, day and hour of birth, also certifying that he or she treated the eyes of the child with a prophylaxis approved by the state board of health within one hour after birth. This certificate shall be signed by attending physician or in the absence of an attending physician, by such other person above described, with date of signature and address. If there was no physician or such other person in attendance, then the father, householder, manager or superintendent of a public or private institution, or other competent person whose duty it shall become to file such certificate of birth as provided in section one of this act, shall draw a line through the words "I hereby certify that I attended the birth of the above child" and shall write in lieu thereof the words "No physician or other person in attendance," filling out the remainder of the certificate in regard to the year, month, day and hour of birth, and signing the certificate as father, householder, owner of premises, manager or superintendent of institution, as the case may be, with his address;

How signed.

When father
etc., to sign.

Twenty-first, Exact date of filing in office of local registrar, attested by his official signature, and registered number of birth as hereinafter provided. The certificate shall be written legibly in permanent black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information specified above, if possible to obtain them, or satisfactorily account for the omission of any of said items.

When deemed complete.

For law requiring osteopath physicians to report and certify to births and deaths, see § 6743, C. L. 1915.

(3) § 5615. SEC. 3. The local registrar shall supply blanks and instructions, as directed by the secretary of state, to physicians, midwives, and to other persons requiring them. He shall carefully examine each certificate of birth when presented for record to see that it has been made out in accordance with the provisions of this act, and the instructions of the secretary of state, and if any certificate is incomplete or unsatisfactory, he shall immediately notify the informant and require him to supply the missing items if they can be obtained. If it is impossible to obtain any such item, then the local registrar shall fill the blank space with the word "Unknown." When any certificate of birth of a living child is presented without statement of the given or christian name, then the local registrar shall deliver to the informant a special blank for the report of the given or christian name of the child, which shall be filled out with the full name of the child, including given and christian name and surname, as soon as such child shall be named, when said informant shall forthwith deliver the properly filled out blank to the local registrar. The original certificate of birth shall not be considered to be complete until such statement of given or christian name shall be filed or the blank returned with the statement "Died unnamed." The local registrar shall immediately number each certificate of birth when filed with him, whether complete or incomplete, beginning with "No. 1" for the first birth that occurs in his district in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall make a complete and accurate copy of each certificate registered by him, upon a form identical with the original certificate, to be filed and permanently preserved in his office, as the local record of such birth, in such manner as directed by the secretary of state. And he shall, on or before the fourth day of each month, at the time of making his monthly report of deaths, transmit to the secretary of state all original certificates of births registered by him for the preceding calendar month, together with any delayed certificates for preceding months, corrections of certificates previously transmitted, and supplemental statements of given or christian names of children whose names were not given in full in certificates previously filed. And if no births occurred in any month, he

Local registrar to supply blanks, examine certificates, etc.

Certificate without christian name.

Registrar to number certificates.

To make and file copy.

When and to whom to transmit original certificates.

shall, on or before the fourth day of the following month, report that fact to the secretary of state in such manner as he shall direct.

Secretary of state to supply blanks, issue instructions, etc.

(4) § 5616. SEC. 4. The secretary of state shall prepare, print, and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns or in otherwise carrying out the purposes of this act, and shall prepare and issue such detailed instructions as may be required to secure the uniform observance of its provisions, and the maintenance of a perfect system of registration. And no other blanks shall be used than those supplied by the secretary of state. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory, he shall require such further information to be furnished as may be necessary to make the record complete and satisfactory. And all physicians, midwives, or other informants, and all other persons having knowledge of the facts, are hereby required to furnish such information as they may possess regarding any birth, upon demand of the secretary of state, in person, by mail, or through the local registrar. He shall further arrange, bind and permanently preserve the certificates in a systematic manner, and may prepare and maintain a comprehensive and continuous card index of all births registered, the cards to show the names of parents, name of child, place and date of birth, number of certificate, and the volume in which it is contained, and any other necessary item.

To examine certificates.

How arranged.

Proceedings, in case facts incorrectly stated.

(5) § 5617. SEC. 5. Whenever it may be alleged that the facts are not correctly stated in any certificate of birth theretofore registered, the local registrar shall require a deposition under oath to be made by the person asserting the fact, to be supported by the depositions of two or more credible persons having knowledge of the facts, setting forth the changes necessary to make the record correct. Having received such deposition, he shall file it and shall then draw a line through the incorrect statement or statements in the certificate, without erasing them, and shall make the necessary corrections, noting on the margin of the certificate his authority for so doing, and transmit the deposition, attached to the original certificate, when making his regular monthly returns to the secretary of state. He shall correct his register in the same manner that he corrected the original certificate. If the correction relates to a certificate of birth previously returned to the secretary of state, he shall transmit the deposition forthwith to the secretary of state. If the correction is first made upon the original certificate of birth on file in the office of the secretary of state, then the secretary of state shall immediately transmit a certified copy of the original certificate, corrected as above, to the local registrar, who shall thereupon substitute such certified copy for the copy of the certificate in his records. All such corrections and marginal notes

referring to them shall be made in permanent red ink, and no fee shall be charged in connection therewith.

(6) § 5618. SEC. 6. Every physician or in the absence of an attending physician, every person who shall either gratuitously or for hire attend a woman in childbirth, shall be entitled to be paid the sum of fifty cents for each certificate made and filed by such physician or other person as provided in section two of this act, and each local registrar shall be entitled to be paid the sum of twenty-five cents for each birth certificate properly and completely made out and registered with him and by him returned to the secretary of state, on or before the fourth day of the following month, which sum shall include the making of the copy of the certificate to be filed and preserved in his office. Certificates lacking certain items, including the given or christian name of the child, as to children not named at the date of filing the report, shall not be considered as defective, providing the missing information is obtained and returned to complete the certificate as elsewhere provided in this act: Provided, That the registrar for the city of Detroit and the registrar for the city of Grand Rapids shall receive no compensation for the duties required under this act. In case no births occurred during the calendar month, the local registrar shall be entitled to be paid the sum of twenty-five cents for each report to that effect promptly made in accordance with the requirements of this act. All amounts payable to such registrar under the provisions of this section shall be paid by the treasurer of the county in which the registration district is located, upon presentation of a proper warrant, issued by the secretary of state. The secretary of state shall issue warrants in favor of local registrars at the end of their official years, or for the year ending March thirty-first, when continuing in office, specifying the number of certificates properly registered and promptly returned, and the number of prompt monthly reports made by each, to the effect that no births occurred, with the amount due at the rate fixed herein; and the secretary of state, as soon as possible after the first day of April, shall issue his warrant in favor of the physician or other person filing certificates in accordance with this act. Upon presentation of said warrant to the treasurer of the county in which the registration district is located, the county treasurer shall pay the same in the same manner and out of the same fund that the fees of the local registrar are paid.

Compensation
for certificate.

Compensation
for local
registrar.

Proviso,
registrars of
Detroit and
Grand
Rapids.

How paid.

(7) § 5619. SEC. 7. At the end of each quarter, the local registrar shall send a transcript of all births registered by him for the quarter to the clerk of his county, and suitable blanks for this purpose, containing all the items now required by county records, together with stamped envelopes addressed to the county clerk, shall be supplied by the secretary of

Quarterly
transcripts
to county
clerks.

Warrants for
returns.

state. Warrants in payment for returns shall be transmitted to local registrars through the clerks of their several counties, and shall be countersigned by the county clerks to indicate that the corresponding returns have been duly made to them as required above. If returns have not been made, the county clerks shall at once notify the local registrars, requiring them to do so, and if not filed by them within thirty days, shall return the warrants, with full explanations as to the registered numbers not returned, to the secretary of state, who shall notify the local registrars of their return and, unless satisfactory explanations shall be made or the returns filed forthwith, shall cancel the warrants.

Yearly list of
births to be
delivered to
supervisor.

(8) § 5620. SEC. 8. On or before the tenth day of April in each year, every local registrar shall make out a complete list, on a blank provided by the secretary of state for that purpose, of the births that have occurred in his district during the preceding calendar year, as registered with him, showing names of parents and dates of birth, and shall on or before the tenth day of April, deliver the same to the supervisor of the township or ward where the births occurred or to the assessor or assessors of the city where the births occurred: Provided, That no such list shall be required for cities having a population of more than fifty thousand. The supervisors or assessors, being the officers heretofore charged with the enumeration of births under section four thousand six hundred five, compiled laws of eighteen hundred ninety-seven, shall receive such lists of births, and between the tenth day of April and the first day of June shall make diligent inquiry to ascertain whether any other births have occurred in their townships, wards or cities besides those duly registered and reported to them by the local registrars. And if any such births, not heretofore registered, shall come to their notice, then they shall immediately fill out a certificate of birth, as required by this act, signing the certificate as supervisor or assessor as the case may be, and shall file the same with the local registrar, together with a statement of the name and address of the physician, midwife, or person responsible for failure to file the certificate of birth immediately after birth, as required by this act, and for each added certificate of birth, duly and properly filled out and filed with the local registrar, the supervisor or assessor shall be entitled to twenty-five cents, to be paid by the county treasurer upon warrant from the secretary of state in the same manner as to other informants. And it shall be the duty of the secretary of state to investigate such cases and to prosecute wilful or repeated violations of this act.

Proviso.

Duty of
supervisors
on receiving
lists.

Certified
copy of
record of
birth, who to
furnish, fee.

(9) § 5621. SEC. 9. The secretary of state shall, upon request, furnish any applicant a certified copy of the record of any birth registered under the provisions of this act, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant. And any such copy of the record of a birth, when properly certified by the

secretary of state to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records, when no certified copy is made, the secretary of state shall be entitled to a fee of fifty cents for each hour or fractional hour of time of search, to be paid by the applicant. And the secretary of state shall keep a true and correct account of all fees by him received under these provisions, and turn them over to the state treasurer.

Fee for
searching
records, etc.

(10) § 5622. SEC. 10. All superintendents or managers, or other persons in charge of hospitals or lying-in institutions, to which women resort for confinement, are hereby required to make a record of all the personal and statistical particulars relative to the inmates of their institutions, there residing for the purpose of confinement, at the date of taking effect of this act, that are required in the form of certificate herein provided for, in addition to such other record as may be required by existing laws or the circumstances of the case. And thereafter such record shall be by them made, for all future inmates, at the time of admission.

Manager of
lying-in
institution,
to make
records.

(11) § 5623. SEC. 11. Any physician or other person who either gratuitously or for hire shall be in attendance upon a case of confinement who shall neglect or refuse to file a proper certificate of birth with the local registrar within the time required by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars, or shall be imprisoned not to exceed thirty days, or shall suffer both such fine and imprisonment at the discretion of the court. If there was no physician or other person as above described in attendance upon any case of confinement, then the father, if he shall refuse or neglect to file a proper certificate of the birth with the local registrar within the time required by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be liable to the same penalty as that incurred by the physician or such other person in attendance in case of the violation of the law, as above. And in the absence of the father, then the householder upon whose premises the birth occurred, the superintendent or manager of the public or private institution, shall individually be liable, in the order of their responsibility, and in case of conviction for failure or neglect to comply with the requirements of this act, shall be subject to the penalty imposed upon the physician or other person in attendance in case of similar refusal or neglect. Any registrar who shall neglect or fail to enforce the provisions of this act in his district, or shall neglect or refuse to perform any of the duties imposed upon him by this act or by the instructions and directions of the secretary of state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars or be imprisoned not over thirty days, or shall suffer both such

Neglect to
sign certifi-
cate.

Penalty.

When father,
etc., liable.

Neglect to
enforce act.

Penalty.

Alteration of certificate.	fine and imprisonment at the discretion of the court. Any person who shall wilfully alter any certificate of birth, or the copy of any certificate of birth on file in the office of the local registrar, except to correct same in the manner provided in this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than
Penalty.	ten dollars nor more than one hundred dollars, or shall be imprisoned not exceeding sixty days, or shall suffer both such
General liability.	fine and imprisonment at the discretion of the court. And any other person or persons who shall violate any of the provisions of this act, or shall wilfully neglect or refuse to perform any duties imposed upon them by this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof,
Penalty.	shall be fined not less than five dollars nor more than one hundred dollars, or shall be imprisoned not exceeding thirty days, or shall suffer both such fine and imprisonment at the discretion of the court.
Local registrars to enforce act.	(12) § 5624. SEC. 12. Local registrars are hereby charged with the strict and thorough enforcement of the provisions of this act in their districts, under the supervision and direction of the secretary of state. And they shall make an immediate report to the secretary of state of any violations of this law coming to their notice by observation or upon complaint of any person or otherwise. The secretary of state is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and with supervisory power over local registrars, to the end that all of its requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally, or by accredited representatives, and all registrars shall aid him, upon request, in such investigation.
Secretary of state, supervisory power.	When he shall deem it necessary, he shall report cases of violation of any of the provisions of this act to the prosecuting attorney of the county, with a statement of the facts and circumstances, and when any such case is reported to them by the secretary of state, all prosecuting attorneys or officials acting in such capacity shall forthwith initiate and promptly follow up the necessary court proceedings against the parties responsible for the alleged violation of the law. And upon request of the secretary of state, the attorney general shall likewise assist in the enforcement of the provisions of this act.
To whom to report violations.	

Sec. 13 repeals inconsistent parts of act 194 of 1867, Secs. 4605-4613, C. L. 1897, except as to the births in the year 1905; Act 240 of 1915 repeals act 194 of 1867.

REGISTRATION OF DEATHS.

An Act to provide for the registration of deaths in Michigan and requiring certificates of death.

[Act 217, P. A. 1897.]

The People of the State of Michigan enact:

(13) § 5604. SECTION 1. That the body of no person whose death occurs in the state shall be interred, deposited in a vault or tomb or otherwise disposed of, or removed from the township, village or city in which the death occurred, until a permit for burial or removal shall have been properly issued by the clerk of the township, village or city in which the death occurs, who shall be the registrar of deaths: Provided, That in cities that have, or shall institute, a system of immediate registration of deaths by the board of health, the health officer or secretary of the board of health shall act as registrar of deaths under this act, in lieu of the city clerk, and shall in all respects conform to its provisions.

Burial permit to be issued by clerk.

Proviso, in cities.

See secs. 20-21 permitting licensed embalmers to act as subregistrars of deaths.

(14) § 5605. SEC. 2. Whenever any person shall die, the undertaker, householder, relative, friend, manager of institution, sexton or other person superintending the burial of said deceased person, shall cause a certificate of death to be filled out with all of the personal and family particulars required in section three of this act, and attested by the signature of a relative or some competent person acquainted with the facts. The physician who attended the deceased person during his last illness shall fill out the medical certificate of cause of death, which death certificate shall be delivered to the registrar within the time designated, if any, by the local board of health. In case of death without the attendance of a physician, or if it shall appear probable that the deceased person came to his death by unlawful or suspicious means, then the registrar shall refer the certificate to the health officer or coroner for immediate investigation and report prior to issuing the permit: Provided, That when the health officer is not a physician and only in such case, the registrar is authorized to insert the facts relating to the cause of death from statements of relatives or other competent testimony. Upon the presentation of a certificate of death properly filled out and signed, the registrar shall issue a permit for the burial or removal of the body and shall immediately record the death in the register of deaths, numbering all certificates consecutively in the order in which they are received, beginning with number one for the first death that occurs in each year. In deaths from dangerous communicable diseases, burial or removal permits shall be granted by the registrar only in accordance with the rules of the local board of health and of the state board of health

Who shall obtain death certificate.

Physician to certify to cause of death.

Proviso.

Deaths from dangerous communicable diseases.

Proviso.

relating thereto. The sexton or other person having charge of the interment or final disposition of the body shall retain the burial permit when presented to him by the undertaker: Provided, That when a body is shipped the removal permit shall be presented by the undertaker or other person shipping the same to the agent of the transportation company, and shall be attached by him, with the transit permit, to the box containing the body, to accompany the same to destination, and no transit permit shall be issued or received by any transportation company for the shipment of a body unless accompanied by the registrar's removal permit.

For law requiring osteopath physicians to report and certify to births and deaths, see § 6743, C. L. 1915.

Death certificate to contain.

(15) § 5606. SEC. 3. The certificate of death shall contain the following facts concerning each decedent:

FIRST PART—Personal and family particulars:—Date of death, stating year, month and day; full name; sex; age, in years, months and days, if known, or the approximate age if the exact age cannot be ascertained; color; whether single, married, widowed, or divorced; if married, age at first marriage, and parent of how many children, of whom how many are living; place of death, giving ward, street and number if in a city; birthplace (state or country if not born in Michigan); occupation; full names of both parents; birthplaces of both parents; proposed place and time of burial or place and route for removal of body; signature and address of reporter certifying to above facts; signature and address of undertaker.

Name of disease, cause of death, etc.

SECOND PART—Medical certificate of cause of death:—Name of disease; immediate cause of death, together with contributory causes or complications, if any; duration of each cause; date last seen by medical attendant, or fact of no medical attendance; in violent deaths, statement whether death resulted from accident, suicide or homicide; whether a post-mortem was held and results thereof, signature and address of medical attendant, health officer or coroner certifying to cause of death: Provided further, Said certificate and permit shall not be required before burial in townships where it is impracticable to obtain the same within a reasonable time after death, but in all such cases, said certificate shall be obtained within ten days after death.

Proviso, in townships.

When to report to secretary of state.

(16) § 5607. SEC. 4. Registers of deaths shall be supplied by the secretary of state to registrars for recording certificates of death, together with all blanks required for the execution of this act. On the fourth day of each month the registrar of each township, village and city shall promptly transmit to the secretary of state, in an official envelope provided by the state and stamped with one full letter stamp, all the certificates of death filed in his office during the [preceding] proceeding calendar month, with a statement of the number of deaths so reported: Provided, That the registrars of cities, may in lieu of the original certificates of

Proviso, in cities.

deaths transmit certified copies of the same to the secretary of state. If no deaths occurred, he shall make a return to that effect upon a postal card blank. The certificates of death returned to the secretary of state shall be permanently preserved, bound and indexed by him; the statistical data therein contained shall be compiled and published in the annual registration report, and monthly bulletins shall be issued showing the mortality of the state in detail, the prevalence of important causes of death, and such other information as shall be of public interest and sanitary value. The registrar shall also send a transcript monthly to the clerk of his county containing a record of all of the deaths entered upon his register during the preceding calendar month for entry upon the county record of deaths. All certificates of death, local registers or county records authorized under this act or certified copies thereof shall be prima facie evidence in all courts and for all purposes of the facts recorded therein.

To make
monthly
report to
county clerk.

Duly filed certificates of death are admissible on the issue of the cause of death of the persons to whom they relate, though the physicians who made them are prohibited from testifying to the facts therein stated because acquired in their professional capacity.—*Krapp v. Metropolitan Life Ins. Co.*, 143 / 369. See *Gilchrist v. Mystic Workers of the World*, 188 / 466.

(17) § 5608. SEC. 5. Each registrar of deaths shall receive twenty-five cents for the proper record and return of each death to the secretary of state and the proper return of a transcript thereof to the clerk of the county in which his registration district is situated, which fee shall also cover the issuing of a burial or removal permit. The secretary of state shall certify to the clerk of each county annually the number of properly executed certificates of death received by him from each registrar in such county for the preceding calendar year, which certified statements such county clerk shall compare with the transcript of deaths on file in his office, and if such transcripts shall be found to conform with such certified statements, such county clerk shall deliver such certified statements to the respective registrars entitled thereto, which certified statements shall be received by the treasurer of the county in which such registration districts are situated, and payment shall be made thereon in accordance with the rate fixed in this section: Provided, That the secretary of state shall not include in the number of certificates certified for payment any imperfect certificates, or those not transmitted promptly as required by section four of this act: Provided further, That the registrars of cities having a population of ten thousand inhabitants or more by the last United States or state census, shall receive no compensation other than their salaries for the duties required by this act.

Registration
fee.

Proviso.

Further
proviso.

(18) § 5609. SEC. 6. Any official failing or refusing to perform his duty under this act, or any undertaker violating any of its provisions, and any person who shall knowingly bury, or assist in burying or otherwise disposing of any deceased person without there shall first have been obtained a burial permit in compliance with the provisions of this act,

Penalty.

Duty of
registrars.

Powers of
secretary of
state.

Prosecuting
attorneys to
assist.

Repealing
clause.

Proviso.

Further
proviso.

Further
proviso.

shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by a fine of not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days, or suffer both fine and imprisonment at the discretion of the court. Local registrars shall see that the provisions of this act are enforced in their jurisdictions: the secretary of state shall be charged with the general execution of the law and shall have supervisory power over registrars to the end that this act shall be uniformly and effectually executed throughout the state. Prosecuting attorneys, shall, upon the request of a local registrar or of the secretary of state, assist in the enforcement of the provisions of this act.

(19) § 5610. SEC. 7. All of the part of act number one hundred and ninety-four of eighteen hundred and sixty-seven, as amended by act number one hundred and twenty-five of eighteen sixty-nine, relating to the collection and return of deaths and inconsistent with this act is hereby repealed: Provided, That the returns of deaths for the calendar year eighteen hundred and ninety-seven shall be duly collected and compiled under the provisions of said act: Provided further, That it shall be the duty of the local boards of health to see that the provisions of this act are enforced: Provided further, That in sparsely settled townships, having an average density of population of less than five persons per square mile at the time of the last preceding United States or state census, burial permits shall not be required in advance of interment when impracticable to obtain them, but in all such cases the certificate of death shall be filed with the registrar at the earliest practicable moment, not to exceed ten days after death, and not later than the fourth day of the following calendar month.

Act 240, of 1915 (§ 69, C. L. 1915), repeals act 194 of 1867, above referred to.

SUBREGISTRARS OF DEATHS.

An Act to provide that licensed embalmers may act as subregistrars of deaths when duly authorized by the secretary of state.

[Act 115, P. A. 1903.]

The People of the State of Michigan enact:

To whom to
apply for
permission.

(20) § 5611. SECTION 1. Any embalmer duly licensed by the state board of health as provided by the laws of the state of Michigan, and whose license has not been revoked, may make application to the secretary of state, accompanied by a fee of one dollar, for permission to act as subregistrar of deaths under the act to provide for the registration of deaths in Michigan and requiring certificates of death, being sections forty-six hundred fourteen to forty-six hundred twenty, inclusive, of the compiled laws of eighteen hundred ninety-seven.

Sections 4614-20, C. L. 1897, are sections 5604-10, C. L. 1915.

(21) § 5612. SEC. 2. The secretary of state shall, in his discretion, grant authority to any licensed embalmer to act as subregistrar of deaths, in which capacity he shall be authorized to issue burial permits to himself for deaths occurring in any township or village (but not city) in the state under the same restrictions as those governing registrars. He shall sign as "Licensed embalmer, No.," stating the number of his license. He shall not issue a permit to himself, or conduct a funeral, until he shall have obtained the certificate of death, properly filled out in all respects required by the registration law, legibly and correctly in ink. He shall personally file all certificates of death upon which he has issued permits to himself with the registrars of the townships or villages in which the deaths occurred on or before the third day of the month following that in which the deaths occurred, and failure to do so or to comply strictly with this act shall warrant the immediate cancellation of his authority as subregistrar by the secretary of state. An embalmer whose license is revoked by the state board of health shall thereby become disqualified as a subregistrar of deaths. Subregistrars shall receive no fees or other compensation for issuing burial or removal permits or transit permits to themselves, or for transmitting certificates of death to the township or village clerks under this act, but the regular registrars shall receive the usual compensation for such certificates when promptly transmitted under the registration law.

Who to
grant.

When may
issue burial
permit.

Certificate of
death, where
filed.

When
disqualified.

Fees.

MARRIAGES AND THE SOLEMNIZATION THEREOF.

[R. S. 1846, Chap. 83.]

(22) § 11362. SECTION 1. Every male who shall have attained the full age of eighteen years, and every female who shall have attained the full age of sixteen years, shall be capable in law of contracting marriage, if otherwise competent.

Who shall be
capable of
contracting
marriage.

Secret marriages, see section 50 et seq.

AGE OF CONSENT: Consent is the first requisite in marriage and, in case of persons under the ages specified, the capacity to consent is withheld by law.—Bonker v. People, 37/7. A person under the statutory age cannot be lawfully married.—Lewis v. People, 37/520. When persons marry one of whom is over and the other under age of consent, the former is bound by the marriage, unless they separate by consent before the other reaches lawful age and do not cohabit afterwards; or, unless the other refuses consent on arriving at that age.—People v. Slack, 15/193. Contracting marriage means the actual forming of the marriage relation. Marriages contracted by parties who are of the legal age of consent are valid. But executory contracts to marry, made by parties under the age of twenty years, have not the legal force necessary to sustain an action for breach of promise.—Frost v. Vought, 37/65. See also People v. Schoonmaker, 119/242.

(23) § 11363. SEC. 2. Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of parties capable in law of contracting, is essential.

Marriage is a
civil contract.

MARRIAGE: Chastity is not a requisite to the validity of a marriage, and while marriage is, in a very important sense, a contract, it is also a rela-

tion governed by rules of public policy, which apply to no mere private agreements.—*Leavitt v. Leavitt*, 13 / 456. A contract by which two parties mutually agreed to live as man and wife, but each was to retain the right to buy, sell, or transfer his or her property without question from the other. Held to provide only for a concubinage intercourse, is not a valid contract under which either party can claim any rights.—*Clancy v. Clancy*, 66 / 202. Where one of the parties to an alleged marriage, instead of assenting to the contract, positively dissents from it, there can be no legal or valid marriage, although a ceremony is performed by the official minister or magistrate.—*Roszel v. Roszel*, 73 / 133. See *People v. Shoonmaker*, 119 / 242; in *re Fitzgibbons' Estate*, 162 / 419.

Describing
persons
men not to
marry.

(24) § 11364. SEC. 3. No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, nor his sister, brother's daughter, sister's daughter, father's sister, or mother's sister, or cousin of the first degree.

Such marriages are equally prohibited, whether the parties or the parents are legitimate or illegitimate, or of the whole or of the half blood.—*People v. Jenness*, 5 / 318. This is a public law, of which courts are bound to take notice.—*Hicks v. People*, 10 / 396.

Describing
persons
women not to
marry.

(25) § 11365. SEC. 4. No woman shall marry her father, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, nor her brother, brother's son, sister's son, father's brother, mother's brother, or cousin of the first degree.

Who not to
marry.

(26) § 11366. SEC. 5. No marriage shall be contracted whilst either of the parties has a former wife or husband living, unless the marriage with such former wife or husband shall have been dissolved.

People v. Dawell, 25 / 273.
When divorced parties may be temporarily prohibited from marrying again, see section 97.

Who capable
of contracting
marriage.

(27) § 11367. SEC. 6. No insane person, idiot, or person who has been afflicted with syphilis or gonorrhoea and has not been cured of the same, shall be capable of contracting marriage. All marriages heretofore contracted between white persons and those wholly or in part of African descent are hereby declared valid and effectual in law for all purposes; and the issues of such marriages shall be deemed and taken as legitimate as to such issue and as to both of the parents.

Felony, what
deemed.

Any person who has been afflicted of syphilis or gonorrhoea and has not been cured of the same, who shall marry shall be deemed guilty of a felony and upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the state prison at Jackson not more than five years or by both such fine and imprisonment in the discretion of the court: Provided, That in all prosecutions under this act a husband shall be examined as a witness against his wife and a wife shall be examined as a witness against her husband whether such husband or wife consent or not: And provided further, That in all cases arising under this act any physician who has attended or

Penalty.

Proviso.

Further
proviso.

prescribed for any husband or wife for either of the diseases above mentioned shall be compelled to testify to any facts found by him from such attendance. No person who has been confined in any public institution or asylum as an epileptic, feeble-minded, imbecile or insane patient shall be capable of contracting marriage without, before the issuance by the county clerk of the license to marry, filing in the office of the said county clerk a verified certificate from two regularly licensed physicians of this state that such person has been completely cured of such insanity, epilepsy, imbecility, or feeble-mindedness and that there is no probability that such person will transmit any of such defects or disabilities to the issue of such marriage. Any person of sound mind who shall intermarry with such insane person or idiot or person who has been so confined as an epileptic, feeble-minded, imbecile or insane patient in any public institution or asylum, except upon the filing of certificate as herein provided, with knowledge of the disability of such person, or who shall advise, aid, abet, cause, procure or assist in procuring any such marriage contrary to the provisions of this section shall be deemed guilty of a felony and on conviction thereof in any court of competent jurisdiction shall be punished by fine of not more than one thousand dollars or by imprisonment in the state prison at Jackson not less than one year nor more than five years, or by both such fine and imprisonment in the discretion of the court.

Feeble-minded persons, etc., when may marry.

Felony, what deemed.

Penalty.

(28) § 11368. SEC. 7. Marriages may be solemnized by any justice of the peace or judge of probate in the county in which he was chosen, or judge of a municipal court in the municipality in which he was chosen, and they may be solemnized throughout the state by any minister of the gospel who has been ordained or authorized to solemnize marriages according to the usages of his denomination, and who is a pastor of any church or churches in this state, or who shall continue to preach the gospel in this state: Provided, That all non-resident ministers of the gospel, who are authorized by this act to solemnize marriages, shall keep proper records and make returns as required by section two, of chapter sixteen of the compiled laws of eighteen hundred seventy-one.

Who may solemnize marriages.

Proviso.

Section 2 referred to is Sec. 4606, C. L. 1897, evidently superseded by the marriage license act of 1887, sections 37-46 of this compilation.

VALIDITY OF MARRIAGE: The validity of a marriage solemnized in another state must, in a criminal case, be shown by the laws of such state.—*People v. Lambert*, 5 / 364. The general rule of law is, that a marriage valid where it is celebrated is valid everywhere; and the converse to this is equally general, that a marriage void where it is celebrated is void everywhere.—*Hutchins v. Kimmell*, 31 / 131. Whatever the form of the ceremony, or even if all ceremony was dispensed with, if the parties agreed presently to take each other for husband and wife, and from that time lived together professedly in that relation, proof of these facts would be sufficient to constitute proof of marriage binding upon the parties, and which would subject them and others to legal penalties for a disregard of its obligations.—*Id.* 130; *Peet v. Peet*, 52 / 467; *Kopke v. People*, 43 / 45. And where a marriage ceremony was performed in one county by a justice of the peace of another county and was followed by cohabitation as husband and wife, it constituted a valid marriage.—*People v. Girdler*, 65 / 68. Proof of marriage ceremony.—*People v. Calder*, 30 / 90. But a contract signed by which the parties mutually agreed, from henceforth and forever, to live as man and wife, but each to retain the right to buy, sell and transfer his or her property without question from the other, was held to provide only for a concubinage intercourse and

not to be a valid contract of any kind.—Clancy v. Clancy, 66 / 206-7. A valid marriage.—Williams v. Kilburn, 88 / 279. Effect of sham marriage.—People v. Loomis, 106 / 250.

One of parties to be examined on oath.

(29) § 11369. SEC. 8. All justices of the peace and ministers of the gospel are hereby authorized and required, before solemnizing any marriage, to examine at least one of the parties on oath, which oath they are hereby authorized to administer, as to the legality of such intended marriage.

The questions of competency to marry are now determined by the clerk before the issue of the marriage license. See sec. 39.
Bonker v. People, 37 / 10.

No particular form required.

(30) § 11370. SEC. 9. In the solemnization of marriage, no particular form shall be required, except that the parties shall solemnly declare, in the presence of the magistrate or minister, and the attending witnesses, that they take each other as husband and wife; and in every case, there shall be at least two witnesses, besides the minister or magistrate, present at the ceremony.

Sections 10-13 of this act were repealed by act 194 of 1867.

Forfeiture for joining persons in marriage contrary to law.

(31) § 11371. SEC. 14. If any justice of the peace or minister of the gospel shall join any persons in marriage contrary to the provisions of this chapter, he shall forfeit for every such offense a sum not exceeding five hundred dollars.

See section 42.

Punishment of unauthorized persons.

(32) § 11372. SEC. 15. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing of any legal impediment to the proposed marriage, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by imprisonment in the county jail not more than one year, or by a fine not less than fifty, nor more than five hundred dollars, or by both such fine and imprisonment, in the discretion of the court.

See section 42.

Marriage not void in certain cases.

(33) § 11373. SEC. 16. No marriage solemnized before any person professing to be a justice of the peace, or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed justice or minister: Provided, The marriage be consummated with a full belief on the part of the persons so married or either of them, that they have been lawfully joined in marriage.

Mere incontinence will not avoid a subsequent marriage.—Leavitt v. Leavitt, 13 / 456; Sissung v. Sissung, 65 / 180. As to the avoidance of the marriage by the fraudulent concealment by a female of her pregnancy, in case of one ignorant of the fact and believing her to be chaste, see Id. 168. Sham marriage.—People v. Loomis, 106 / 250.

(34) § 11374. SEC. 17. The preceding provisions of this chapter, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among the people called Friends or Quakers; nor marriages among people of any other particular denomination, having, as such, any peculiar mode of solemnizing marriages; but such marriages may be solemnized in the manner heretofore used and practiced in their respective societies or denominations.

Marriages
among
Quakers.

The certificates and records here referred to were provided for in sections 10-13 of this chapter, which provisions were superseded by the act of 1867. Provisions of the law of 1867 for the recording of marriages were superseded by the marriage license act of 1887. See sections 37-46 of this compilation.

PROOF IN CIVIL CASES: The law is very liberal in the admission of evidence in proof of marriage and pedigree.—Shotwell v. Harrison, 22/415. A certificate of marriage in another state signed by the minister, may perhaps avail in civil proceedings, if properly supported.—People v. Lambert, 5/365. A duly authenticated certificate of a marriage, celebrated in a foreign country, may be received in evidence here.—Hutchins v. Kimmell, 31/126. Marriage is provable by conduct and reputation in all civil cases involving property rights.—Proctor v. Bigelow, 38/282. Reputation is important as evidence to establish the fact of marriage; but it is only one of the circumstances from which the true relations of the parties, as legal or otherwise, may be inferred; it is not in itself a fact which is at all important to the validity of the relation. And upon doubtful facts, the court ought to presume a lawful marriage rather than a notorious act of immorality.—Peet v. Peet, 52/467. There is no rule of law making marriage records the best evidence in any case, and even where they exist some parol evidence is usually necessary to identify the parties, in case of any controversy.—Proctor v. Bigelow, 38/283. There is no authority that requires the highest evidence of marriage in suits not directly involving the marriage relation as a part of the main issue.—Leonard v. Pope, 27/146. In an action by the husband for enticing away his wife, direct proof of a formal marriage is not requisite, but evidence of cohabitation and repute and of defendant's admissions that the plaintiff and his alleged wife were married may be allowed to satisfy the jury.—Perry v. Lovejoy, 49/532. See Hoffman v. Simpson, 110/133.

PROOF IN CRIMINAL CASES: Dixon v. People, 18/84. Proof of ceremony performed.—People v. Calder, 30/90. In criminal prosecution and cases of seduction, marriage is not provable by conduct and reputation.—Proctor v. Bigelow, 38/283. Where the action is for criminal conversation an actual marriage must be proved and such evidence of cohabitation and repute, as would suffice in a prosecution for enticing away the wife, will not avail.—Perry v. Lovejoy, 49/532-3; Hutchins v. Kimmell, 31/130. In a prosecution for adultery with a married woman, the recorded marriage certificate is admissible to aid in proving the marriage, though it may be insufficient without some identification of the parties.—People v. Broughton, 49/339. A certificate of marriage in another state cannot avail as proof of marriage in criminal trials, where the defendant is entitled to confront the witness.—People v. Lambert, 5/365. See People v. Bennett, 39/209; People v. Loomis, 106/250; People v. Isham, 109/72; People v. Imes, 110/252.

(35) § 12530. SEC. 42. The original certificates and records of marriage made by the minister, justice or other person authorized to solemnize marriages, as prescribed by law, and the record thereof made by the county clerk, or a copy of such record, duly certified by such clerk, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

Certificates
and records
made
evidence.

The above is section 42, Chapter 17 of the Judicature Act of 1915, and supersedes section 8601, C. L. 1897.

An Act to provide punishment for wife desertion in certain cases.

[Act 284, P. A. 1907.]

The People of the State of Michigan enact:

Certain
desertion a
felony.

(36) § 7794. SECTION 1. Every man or boy who shall marry any woman or girl for the purpose of escaping prosecution for rape, bastardy or seduction, and shall afterwards desert her without good cause, shall be deemed guilty of a felony, and shall, upon conviction, be fined not more than one thousand dollars or be imprisoned in the state prison for not more than three years: Provided, That no prosecution shall be brought under this act after five years from the date of the marriage: Provided further, That in all prosecutions under this act, the wife may testify against a husband without his consent.

Proviso.

Further
proviso.

For an act to prevent the desertion and abandonment of wife or children by persons charged by law with the maintenance thereof, etc., see § § 7789-93, C. L. 1915.

LICENSES AND REGISTRATION OF MARRIAGES.

An Act for the requiring of a civil license in order to marry, and the due registration of the same, and to provide a penalty for the violation of the provisions of the same.

[Act 128, P. A. 1887.]

The People of the State of Michigan enact:

Persons in-
tending mar-
riage must
obtain license.

(37) § 11376. SECTION 1. It shall be necessary for all parties intending to be married to obtain a marriage license from the county clerk of the county in which either the man or woman resides, and to deliver the said license to the clergyman or magistrate who is to officiate, before the marriage can be performed. If both parties to be married are non-residents of the state it shall be necessary to obtain such license from the county clerk of the county in which the marriage is to be performed.

Where non-
residents
must obtain
license.

An act for the requiring of a civil license in order to marry, and the due registration of the same, and to provide a penalty for the violations of the provisions of the same, does not conflict with section 21, Art. V, of the constitution.—People v. McGlaughlin, 108 / 516. A marriage in a county of the state between non-residents of such county, is valid, although one of the parties makes a false affidavit as to her residence in such county in securing a license for the marriage for which she would be subject to penalty under § 11376 et seq.—Switchmen's Union v. Gillerman, 196 / 141.

Secretary of
state to fur-
nish forms,
blanks.

(38) § 11377. SEC. 2. Blank forms for marriage license and certificate, as also proper books of registration, ruled for the items contained in said forms, shall be prepared by the secretary of state, and shall be furnished by him to the county clerk [clerks] of the various counties of the state in

MARRIAGES.

quantities needed. The blank forms for license and certificate shall be made in duplicate and shall provide spaces for the entry of the following items, to-wit: The full name, age, color, place of residence, place of birth, occupation, and if known, the father's name, and mother's maiden name, of each of the parties to be married; the number of times either of the parties may have been previously married; the bride's maiden name, in case she is a widow; the date of the giving of the license; the signature of the county clerk; the date and place of the marriage; the names and residences of two witnesses to the marriage; and the certification of the officiating clergyman or magistrate, that the marriage contemplated by the license has been performed by him. And the secretary of state shall furnish to the county clerks of the various counties of the state, blank forms of affidavit, containing the requisite allegations, under the laws of this state, of the competency of the parties to unite in the bonds of matrimony, and any party applying for license to marry, shall cause such an affidavit to be made and filed with the county clerk, as a basis for the issuing of the license; and such affidavit, together with the license, shall be made a matter of record of said clerk's office.

Form of
license.

Secretary of
state to fur-
nish blank
forms of
affidavit.

(39) § 11378. SEC. 3. It shall be the duty of the county clerk on application being made to him to fill out the blank spaces of the license according to the sworn answers of the applicant, taken before him or some person duly authorized by law to administer oaths. Whenever it shall appear from said affidavit that the said applicant applies for a license for the marriage of a female who has not attained the age of eighteen years, then it shall be the duty of said county clerk to require that there shall first be produced the written consent of one of the parents of said female or of her legal guardian to the marriage of said female, and to the issuing of the license for which application is made, and such consent shall be given personally in the presence of the county clerk or be acknowledged before a notary public or other officer authorized to administer oaths unless such female have no parent or guardian living. No license shall be issued by said county clerk in such cases until the said requirement is complied with. Such written consent shall be preserved on file in the office of said county clerk. If it shall appear that the parties are legally entitled to be married, the county clerk shall sign the license in certification of the fact that it is properly issued, and he shall make a correct copy thereof in the books of registration. For his services connected therewith he shall be entitled to a fee of fifty cents, to be paid by the party applying, and at the time of the issuing of the license. He shall give the license thus filled out and signed by him, together with the blank form of certificate, to the party applying for delivery to the clergyman or magistrate who is to officiate at the marriage. On the return of the license to the county clerk, as hereinafter provided, with the certificate of the clergyman or magistrate that the marriage

County clerk
to fill out
blank spaces
in licenses for
marriage.

When to de-
mand written
consent of
parents.

Consent shall
be given per-
sonally or ac-
knowledged
before a
notary.

Written con-
sent to be
filed.

Fee for
services.

To record
licenses in
book of reg-
istration.

Licenses and
certificates to
be filed.

has been performed, he shall record in the book of registration in their proper places of entry the date and place of the marriage, the names and residences of two witnesses to the marriage, and the name of the officiating clergyman or magistrate. All licenses and certificates so issued and returned shall be preserved on file in the office of the county clerk, and he shall as often as once in three months make a faithful report to the secretary of state of all licenses and certificates issued and received by him.

Am. 1917, Act 195.

Fees, see *Wayne Co. Auditors v. Reynolds*, 121 / 99.

The marriage licenses and returns kept in the office of the county clerk are public records and as such open to public inspection; and the county clerk has no discretion to withhold them from inspection when in his opinion, the publication of their contents is undesirable.—*Kalamazoo Gazette Co. v. County Clerk*, 148 / 460.

Duty of
officiating
clergyman or
magistrate.

(40) § 11379. SEC. 4. It shall be the duty of the clergyman or magistrate, officiating at a marriage, to fill out the spaces of the certificate left blank for the entry of the time and place of the marriage, the names and residence [residences] of two witnesses, and his own signature in certification that the marriage has been performed by him. He shall separate the duplicate license and certificate, and deliver the half part designated duplicate to one of the parties, so joined in marriage, and within ten days return the original to the county clerk issuing the same. It shall be the duty of such clergyman or magistrate to keep an accurate record of all marriages solemnized in a book used expressly for that purpose.

Penalty for
violating act
by county
clerk.

(41) § 11380. SEC. 5. Any county clerk who shall refuse to give a license to persons properly applying and legally entitled to be married, or who shall violate any of the provisions of this act, shall be adjudged guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars or more than one hundred dollars, or in default of payment thereof, by imprisonment in the county jail for a term of thirty days.

Penalty for
violation by
clergyman.

(42) § 11381. SEC. 6. Any clergyman or magistrate who shall join together in marriage parties who have not delivered to him a properly issued license, as provided for in this act, or who shall violate any of the provisions of this act, shall be adjudged guilty of a misdemeanor, and shall be punished by a fine of one hundred dollars, or in default of payment thereof, by imprisonment in the county jail for a term of ninety days.

People v. McGlaughlin, 108 / 516.

Penalty for
neglect to
return certifi-
cate.

(43) § 11382. SEC. 7. Any person, whose duty it shall be to return a marriage certificate to the county clerk, who shall neglect to return said certificate, shall be adjudged guilty of a misdemeanor, and shall be punished by a fine of not exceeding one hundred dollars or ninety days' imprisonment, or both, in the discretion of the court.

(44) § 11383. SEC. 8. Any person applying for a marriage license who shall swear to a false statement therein, shall be guilty of perjury, and shall be prosecuted therefor under the general laws of the state.

False swearing in application, perjury.

(45) § 11384. SEC. 9. All reports of marriage sent by the county clerks of the various counties of the state to the office of the secretary of state shall be preserved on file in that office, and a proper record thereof shall be made and kept.

Filing and recording of reports.

(46) § 12531. SEC. 43. The record of any license to marry, or of any marriage certificate, in any county clerk's office, or a certified copy thereof, shall be prima facie evidence in any court or proceedings in this state, with the same force and effect as if the original were produced, both as to the facts therein contained and as to the genuineness of the signatures thereto.

Record of license to marry.

The above is section 43, Chapter 17, of the Judicature Act of 1915, and supersedes section 10 of this act, (section 11385, C. L. 1195).
Sec. 11 repeals inconsistent acts.

An Act to provide for the recording of affidavits as to the birth, marriage, death, name, identity or relationship of parties to instruments affecting real estate and the use of the same in evidence.

[Act 123, P. A. 1915.]

The People of the State of Michigan enact:

(47) § 11736. SECTION 1. Affidavits as to the birth, marriage, death, name, residence, identity and relationship of parties named in deeds, wills, mortgages and other instruments affecting real estate may be recorded in the office of the register of deeds of the county where said real estate is situate.

Record of affidavits.

Frederick v. Hillebrand, 199 / 343.

(48) § 11737. SEC. 2. It shall be the duty of the register of deeds for the county where such affidavit is offered for record to receive the same and cause the same to be recorded in the same manner that deeds are recorded. The register of deeds shall collect the same fees for recording such affidavit as are provided by law for recording deeds.

Duty of register.

Fees.

(49) § 11738. SEC. 3. Such affidavits, whether recorded before or after the passage of this act, may be received in evidence in any civil cause, in all courts of this state and by all boards or officers of the state in all suits or proceedings affecting such real estate and shall be prima facie evidence of the facts and circumstances therein contained.

Evidence in civil causes.

Certified copies of birth and death records can be furnished by the Department of State, if desired. The statutory fee for such certificates is 50 cents.

Specific performance of a contract for the sale of land is not a matter of strict right, but is a question for equitable consideration, and it will not be

decreed at the instance of the vendor where the contract called for a marketable title to be shown by the abstract, and the abstract showed defects which it is more or less probable might be remedied by a decree quieting title, if all discoverable, recordable facts under act 123 of 1915, were presented to a court.—Bradway v. Miller, 200/648.

SECRET MARRIAGES.

An Act to provide for the protection of the reputation and good name of certain persons.

[Act 180, P. A. 1897.]

The People of the State of Michigan enact:

Probate judge
may issue
marriage
license in
certain cases.

Proviso.

(50) § 11387. SECTION 1. The judge of probate of each county in the state shall have authority, and it shall be his duty to issue, without publicity, a marriage license to any female making application to him, under oath, containing a statement that she is with child, which if born alive before her marriage will become a bastard, or has lived with a man and has been considered as his wife, or for other good reason, expressed in such application and deemed to be sufficient by the judge of probate, desires to keep the exact date of the marriage a secret, to protect the good name of herself and the reputation of her family: Provided, That such judge of probate shall have authority to marry persons under marriageable age, where the female is with child, or where she has been living with some man as his wife, in cases in which the application for such license is accompanied by the written request of the parents of both parties, if living, and their guardian or guardians if either or both of the parents are dead, or by the written request of the parent or guardian, as the case may be, of the one under marriageable age, where only one is under the marriageable age now fixed by the statute, when, according to his judgment, such marriage would be a benefit to public morals.

When there is no parent and no guardian of a minor applicant for a license, a guardian must be appointed and his written consent obtained, before the probate judge can perform the ceremony.—People v. Schoonmaker, 119/242.
License issued under the provisions of this act not a public record.—Kalamazoo Gazette Co. v. County Clerk, 148/461. Probate judge and clerk not authorized to state communications and facts received in confidence and privileged by the law.—People v. Atwood, 188/36.

Marriage
license.

Proviso.

(51) § 11388. SEC. 2. All applications made under this act for a marriage license shall be in the usual form, certifying that she is with child, and shall be accompanied by a fee of three dollars, two dollars of which the judge of probate shall keep for his services and he shall forward one dollar to the secretary of state as his fee for performing the service required of him by this act. The judge of probate is hereby authorized and empowered, and it shall, upon the filing of such application, become the duty of such judge of probate to perform the ceremony of marriage: Provided, That in

case the applicant or either of the parties to said marriage shall desire to have said marriage ceremony performed by some person other than the judge of probate competent to perform the marriage ceremony, said judge of probate shall issue a written permit to the person designated by said applicant or contracting party, directing him to perform said marriage ceremony; and the party so designated, if he be competent to perform the marriage ceremony under the laws of this state, is hereby empowered to perform said marriage ceremony, but no record, except the record made by said judge of probate in pursuance of the provisions of this act, shall be made thereof. Upon the performance of such marriage ceremony the party so performing it shall return the marriage certificate to the judge of probate, who shall attach the license and certificate to such application. All of which papers shall be executed in duplicate and the person performing such marriage ceremony shall deliver a certificate of such marriage to the bride.

(52) § 11389. SEC. 3. The judge of probate shall file a complete set of all papers in each case in a private file, and shall within ten days after the marriage forward the duplicate thereof to the secretary of state, who shall file such duplicate in a private file and record the same in a private register. Such file in the probate court, and the duplicate and record thereof in the office of the secretary of state, shall be open to inspection only upon the written order of the judge of any circuit or the supreme court of this state, and only for such use as is designated in such order. Such order shall be made only upon the written request of the person or persons who were so married, or when necessary to the protection of property rights arising from or affected by such marriage.

When and
where judge
to file papers.

When record
open to
inspection.

(53) § 11390. SEC. 4. All knowledge of any facts which shall come to the judge of probate, secretary of state or their deputies or assistants, the physicians indorsing the application, or the witnesses to said marriage under the license issued pursuant to the provisions of this act shall be deemed to be privileged communications. Any violation of confidence by the judge of probate, secretary of state or their deputies or assistants, the physician aforesaid, or the witnesses aforesaid, shall upon conviction thereof be deemed to be a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars and the costs of such prosecution, and in default thereof imprisonment in the county jail not to exceed three months. Any editor, publisher or proprietor of any newspaper or publication within this state giving publicity to any license or marriage held under the provisions of this act shall upon conviction thereof be deemed guilty of a misdemeanor, and be subject to a fine of not less than fifty nor more than one hundred dollars, and the costs of prosecution and in default

All knowledge
of facts priv-
ileged com-
munications.

Penalty for
violation of
confidence.

Penalty on
publisher for
publication.

Penalty on
judge of pro-
bate for not
making
returns.

of the payment thereof shall be imprisoned not to exceed thirty days in the county jail, and in addition thereto such editor, publisher or proprietor shall be liable in an action of libel to the parties married under such license. In case the judge of probate performing the marriage ceremony under a license issued under this act shall neglect to make proper return he shall upon conviction thereof be fined in addition to the penalties prescribed in the general laws of this state, not to exceed fifty dollars in the discretion of the court.

Sec. 5 repeals contravening acts.

An Act to release legally married minors from parental control and to determine their marital rights and duties.

[Act 160, P. A. 1919.]

The People of the State of Michigan enact:

Rights, etc.,
entitled to.

(54) SECTION 1. Hereafter the legal marriage of a minor shall release such minor from parental control; and the husband or wife of a minor, so released, shall be entitled to the same rights, benefits and privileges, and such minor shall be subject to the same duties, liabilities and responsibilities, as such husband or wife, as if such minor husband or wife were of legal age at the time of such marriage.

DIVORCE.

[R. S. 1846, Chap. 84.]

Marriages
void without
divorce.

(55) § 11392. SECTION 1. All marriages which are prohibited by law on account of consanguinity or affinity between the parties, or on account of either of them having a former wife or husband then living, and all marriages solemnized when either of the parties was insane or an idiot, shall, if solemnized within this state, be absolutely void, without any decree of divorce or other legal process: Provided, That the issue of such marriage, except that contracted while either of the parties thereto had a former husband or wife living, shall be deemed legitimate.

Proviso.

DIVORCE: Divorces cannot be granted by the legislature, nor authorized by special act for a particular cause not provided for by the general laws of the state.—Const. iv. 26. *Teft v. Teft*, 3 / 67. The jurisdiction over divorce is purely statutory.—*Baugh v. Baugh*, 37 / 61; *Haines v. Haines*, 35 / 145. And not within the original cognizance of courts of equity.—*Haines v. Haines*, 35 / 145. The husband and wife are the only persons recognized as parties in such suits, and only the parties are allowed to intervene.—*Baugh v. Baugh*, 37 / 61. But see the provision for the intervention of the prosecuting attorney in certain cases, found in section 96. There are three parties to every divorce proceeding—the husband, the wife and the state; the first two representing their respective interests as individuals; the state concerned to guard the morals of its citizens, by taking care that, neither by collusion nor otherwise, shall divorce be allowed under such circumstances as to reduce marriage to a mere temporary arrangement of conscience or

passion.—*People v. Dawell*, 25 / 257. Where no relief is sought not dependent on divorce, there can be no decree after death has separated the parties.—*Wilson v. Wilson*, 73 / 621; *Zoellner v. Zoellner*, 46 / 511. See in re *Fitzgibbons' Estate*, 162 / 419. Dismissal of bill.—*Eisenbach v. Eisenbach*, 176 / 354.

FOREIGN DIVORCE: The courts of one state have no jurisdiction to decree a divorce between parties who do not reside therein, but have a permanent domicile in another state.—*People v. Dawell*, 25 / 247. And such divorce is absolutely nugatory.—*Id.* A temporary removal to Indiana for a year for the purpose of obtaining a divorce does not give the courts of that state jurisdiction.—*Reed v. Reed*, 52 / 117. But an Indiana divorce cannot be impeached in a purely collateral civil action, on account of such lack of jurisdiction.—*Waldo v. Waldo*, 52 / 94.

(56) § 11393. SEC. 2. In case of a marriage solemnized Idem.
when either of the parties was under the age of legal consent, if they shall separate during such non-age, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed void without any decree of divorce or other legal process.

VOID: The legal age of consent is fixed by compiler's section 22. The marriage when one or both of the parties is under age, is voidable and not absolutely void.—*People v. Slack*, 15 / 200; *Bonker v. People*, 37 / 6-7; *People v. Bennett*, 39 / 209. See section 85. But under section 15211, C. L. 1915, which makes carnal intercourse with a female under the age of 16 rape, it would seem that any marriage of a female under that age must be void. As to what frauds will invalidate a marriage or authorize a decree of nullity, see *Leavitt v. Leavitt*, 13 / 456-7; *Dawson v. Dawson*, 18 / 335. See *Sissung v. Sissung*, 65 / 168; *Harrison v. Harrison*, 94 / 559; *Nadra v. Nadra*, 79 / 591; *People v. Schoonmaker*, 119 / 244.

(57) § 11394. SEC. 3. When a marriage is supposed to Suit may be brought to annul void marriage.
be void, or the validity thereof is doubted, for any of the causes mentioned in the two preceding sections, either party, excepting in the cases where a contrary provision is herein-after made, may file a petition or bill in the circuit court of the county where the parties, or one of them, reside, or in the court of chancery for annulling the same, and such petition or bill shall be filed and proceedings shall be had thereon, as in the case of a petition or bill filed in said court for a divorce; and upon due proof of the nullity of the marriage, it shall be declared void by a decree or sentence of nullity.

ANNULING MARRIAGE: See section 88; *Leavitt v. Leavitt*, 13 / 452; *Dawson v. Dawson*, 18 / 335. A marriage may be annulled for gross duress, as where a youth was frightened into a marriage by threats of a prosecution for bastardy.—*Smith v. Smith*, 51 / 607. See *Sissung v. Sissung*, 65 / 168. Allowance to wife.—*Webb v. Wayne* Circuit Judge, 144 / 674.

(58) § 11395. SEC. 4. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a bill or petition in the manner aforesaid, for affirming the marriage; and upon due proof of the validity thereof, it shall be declared valid by a decree or sentence of the court; and such decree, unless reversed on appeal, shall be conclusive upon all persons concerned. Suit to affirm marriage.

COMMON-LAW MARRIAGE: To constitute a common-law marriage, the parties must presently agree to take each other for husband and wife and live together in that relation.—*Judson v. Judson*, 147 / 518.

Sentence to imprisonment for life dissolves marriage.

Divorce from bonds of matrimony, for what cause may be decreed.

Adultery.

Incompetency.

Imprisonment.

Desertion.

Drunkards.

Power of circuit court.

(59) § 11396. SEC. 5. When either party shall be sentenced to imprisonment for life in any prison, jail or house of correction, the marriage shall be thereby absolutely dissolved, without any decree of divorce or other legal process, and no pardon granted to the parties so sentenced, shall restore such party to his or her conjugal rights.

(60) § 11397. SEC. 6. A divorce from the bonds of matrimony may be decreed by the circuit court of the county where the parties, or one of them, reside, or by the court of chancery, on the application by petition or bill of the aggrieved party, in either of the following cases:

First, Whenever adultery has been committed by any husband or wife;

Second, When one of the parties was physically incompetent at the time of the marriage;

Third, When one of the parties has been sentenced to imprisonment in any prison, jail or house of correction, for three years or more; and no pardon granted to the party so sentenced, after a divorce for that cause, shall restore such party to his or her conjugal rights;

Fourth, When either party shall desert the other for the term of two years;

Fifth, When the husband or wife shall have become an habitual drunkard;

Sixth, And the circuit courts may, in their discretion, upon application, as in other cases, divorce from the bonds of matrimony any party who is a resident of this state, and whose husband or wife shall have obtained a divorce in any other state.

RESIDENCE: As affecting the jurisdiction of the court, see section 1, chapter 10 of the Judicature Act of 1915 (§ 12340, C. L. 1915). The subject matter of a divorce suit is just as much local as the subject matter of a suit in ejectment. It is the status of the parties, permitted, regulated and controlled by the law of their domicile, which is to be passed upon and determined.—*People v. Dawell*, 25 / 264-5. To give the courts of any state jurisdiction over the marriage relation between a husband and wife, one of the parties, at least, must have a domicile within that state.—*Id.* 254; *Wright v. Wright*, 24 / 180. Mere temporary residence is not sufficient.—*Reed v. Reed*, 52 / 117. The wife may acquire a domicile separate from her husband.—*People v. Dawell*, 25 / 262-3. Where one of the parties resides in this state and the other in another, the courts of either state have authority to dissolve the marriage relation.—*Wright v. Wright*, 24 / 180. The failure to allege residence within the county where the bill is filed is not a jurisdictional defect; the statute does not make such allegation necessary and such fact and the omission to allege it may be cured by amendment.—*People v. McCaffrey*, 75 / 125-6. A wife who leaves her husband on account of his cruelty, and takes up her abode in another county, with the intention of remaining there permanently, becomes at once a resident of such county within the meaning of the divorce laws.—*Wright v. Genesee Judge*, 117 / 244; in re *Woodcock*, 123 / 372. On a bill for divorce, filed by the wife more than two years after her departure from her husband's residence in this state, and within one month after her return to the state for the express purpose of instituting suit, evidence examined, and held, that she was not a resident of this state at the time of filing the bill.—*Bradfield v. Bradfield*, 154 / 115. See *Jamison v. Ramsey*, 128 / 315; *Hoffman v. Hoffman*, 155 / 328.

PROCEEDINGS: As to the parties to divorce proceedings, see note to section 55. Service of process outside of the state is irregular.—*Pratt v. Bank*, Har. 254; *McEwan v. Zimmer*, 38 / 768. Service beyond the jurisdiction of the court is not binding.—*Id.* 775-6. As to the sufficiency of the affidavit of non-residence for an order of publication, see *Pettiford v. Zoellner*, 45 / 362. An order pro confesso cannot be entered until proof of service of the subpoena has been filed.—*Eaton v. Eaton*, 33 / 306. As to re-opening proofs and extending time for taking testimony, see *McClung v. McClung*, 40 / 493. Order opening default and permitting defendant to file answer.—*Hekkema v. Kalamazoo Circuit Judge*, 184 / 646.

APPEALS: A decree granting a divorce is final and appealable, although by the same decree a reference is ordered on the question of temporary alimony.—*Shaw v. Shaw*, 9/164. Where but one party appeals, the decree cannot be modified to his prejudice and in favor of the other.—*Hoff v. Hoff*, 48/282; *Proctor v. Robinson*, 35/284; *Match v. Hunt*, 38/9; *Heath v. Waters*, 40/472. An appeal taken by the wife within the statutory period, but after the death of the husband, will be entertained, but before further proceedings the representatives of the husband must be brought in.—*Shafer v. Shafer*, 30/164. In all appeals the matter is heard in the appellate court as if it had not been heard before, and the order made is such as should have been made below.—*Haines v. Haines*, 35/143. The failure of complainant to appeal from a decree dismissing her bill for divorce, will not preclude her from resisting the claim of the defendant to a decree declaring the marriage void for fraud, he having prayed for such affirmative relief in his answer.—*Nadra v. Nadra*, 79/591.

SUBDIVISION 1: See section 92. There is no class of cases in which an adherence to settled practice and to all those forms prescribed for the attainment of justice should be more inflexibly required, than those in which divorce is sought for alleged adultery.—*Green v. Green*, 26/440. Time, place, circumstances or occasion and the name of the guilty party, if known, must be set forth definitely and with particularity.—*Dunn v. Dunn*, 11/291; *Shoemaker v. Shoemaker*, 20/222; *Bennett v. Bennett*, 24/483; *Green v. Green*, 26/437; *Randall v. Randall*, 31/195; *Herrick v. Herrick*, 31/298. A charge in the bill of living "in open and notorious adultery" with a person named, the time and place being given, is sufficient.—*Marble v. Marble*, 36/386. When the charge of adultery will be deemed too stale and suspicious.—*Stuart v. Stuart*, 47/566. Amendments to the bill must be verified in the same manner as required for the original bill.—*Green v. Green*, 26/438; *Briggs v. Briggs*, 20/34. But facts proved but not alleged in the bill cannot be made available by way of amendment.—*Green v. Green*, 26/437. Proof.—*Bishop v. Bishop*, 17/217; *Dunn v. Dunn*, 11/294. Adultery is not provable by mere scandal and gossip.—*Soper v. Soper*, 29/305. The evidence of reputation is not admissible as substantive proof to show the adultery. It can be considered only as subsidiary and subordinate evidence, as matter in aid of and incidental to the substantive proof and going to explain and account for the conduct of the parties towards each other.—*Marble v. Marble*, 36/388. The proof must be confined to the issue.—*Dunn v. Dunn*, 11/292; *Shoemaker v. Shoemaker*, 20/222. Proof of adulterous acts not alleged will not avail.—*Id.* Nor can they be proved or considered.—*Bennett v. Bennett*, 24/482; *Green v. Green*, 26/437; *Randall v. Randall*, 31/194; *Herrick v. Herrick*, 31/298. But circumstantial evidence is admissible.—*Marble v. Marble*, 36/386. And depraved persons, holding and expressing loose and licentious sentiments, and consorting together, may be presumed to commit such offenses as they have opportunity to commit.—*McClung v. McClung*, 40/498. Proof by particeps criminis.—*Emmons v. Emmons*, Walk. 534; *Herrick v. Herrick*, 31/300. Taking the testimony of young children as to their parents' misconduct is not to be encouraged.—*Kneale v. Kneale*, 28/344; *Crowner v. Crowner*, 44/180. The evidence of the parties in a divorce suit should be taken only on the order of the court. If taken without such order, it will be disregarded.—*Stuart v. Stuart*, 47/566; *Page v. Page*, 51/90. In cases of adultery the right to a divorce consists in the proof of a single fact, and if the confessions of the party were to be taken as sufficient proof, there would be danger of collusion. It is to guard against this, that other proof is required in corroboration of the defendant's confessions.—*Sawyer v. Sawyer*, Walk. 52.

SUBDIVISION 3: Sentence to hard labor in any prison, jail or house of correction, for three years or more, is a good ground of divorce under the statute.—*Johnson v. Johnson*, Walk. 312.

SUBDIVISION 4: Desertion implies a voluntary breaking off of matrimonial cohabitation by one party against the will of the other for the full period of two years, and under circumstances which the law does not consider sufficient to justify it.—*Porritt v. Porritt*, 18/424; *Warner v. Warner*, 54/494; *Wright v. Wright*, 80/575. Desertion must be against the will and acquiescence of the deserted party; separation by consent is not desertion.—*Cooper v. Cooper*, 17/210; *Cox v. Cox*, 35/463; *Beller v. Beller*, 50/51. To make out a case for the dissolution of marriage on the ground of desertion, there must be satisfactory proof of three things: (1) cessation of cohabitation; (2) an intent in the mind of the defendant to desert; and (3) that the separation was against the will of the complainant.—*Rose v. Rose*, 50/92. See further, as to desertion, *Holmes v. Holmes*, 44/555; *Rathbun v. Rathbun*, 76/462. The desertion must have continued during the whole period of two years without interruption. Mutual treaties and deliberations within that period with a view to living together again are inconsistent with the kind of desertion the statute has in view as a ground of divorce.—*Rudd v. Rudd*, 33/101. And the case must be proved in substance as stated.—*Id.* The desertion in another state need not be continued for two years in this state to entitle one to divorce on that ground.—*Colburn v. Colburn*, 70/647. Desertion for a less period than the statutory two years cannot be ground for divorce on the claim that the particular act of desertion constitutes extreme cruelty.—*Vercade v. Vercade*, 147/398. After a separation by consent, nothing but an unconditional and entire resumption of their early relations can restore them to such a position as would make a new separation a desertion.—*Cooper v. Cooper*, 17/210. A wife compelled to leave her home against her will, on account of the cruelty of her husband, is not guilty of desertion.—*Warner v. Warner*, 54/494. See *Cox v. Cox*, 35/463; *Stoffer v.*

Stoffer, 50/491; Powell v. Powell, 58/299; Northway v. Northway, 116/19; Place v. Place, 139/511. See Morrill v. Morrill, 192/150.

SUBDIVISION 5: One who has the habit of indulging in intoxicating liquors so firmly fixed that he becomes intoxicated as often as the temptation is presented, by his being in the vicinity where liquors are sold is an habitual drunkard within the meaning of the divorce law.—Magahay v. Magahay, 35/210; Lentz v. Lentz, 171/517; Smith v. Smith, 172/177. To bring a case within the fair intention of this statute, the defendant must have become an habitual drunkard after marriage; unless, perhaps, when his habits were concealed from the complainant's knowledge until after the marriage.—Porritt v. Porritt, 16/141-2. Occasional intoxication is not habitual drunkenness.—Meathe v. Meathe, 83/152; Tierney v. Tierney, 169/600. See Kline v. Kline, 50/438; Berryman v. Berryman, 59/605; Hall v. Hall, 172/210.

SUBDIVISION 6: A decree of divorce obtained by one party against the other, in another state, whether valid or not, affords a ground for divorce in this state.—Wright v. Wright, 24/180; Van Inwagen v. Van Inwagen, 86/339.

Divorce from
bed and
board, when
may be
decreed.

(61) § 11398. SEC. 7. A divorce from bed and board forever, or for a limited time, may be decreed for the cause of extreme cruelty, whether practiced by using personal violence, or by any other means; or for utter desertion by either of the parties for the term of two years; and a like divorce may be decreed on the complaint of the wife, when the husband, being of sufficient ability to provide a suitable maintenance for her, shall grossly and wantonly and cruelly refuse or neglect so to do.

EXTREME CRUELTY: The misconduct which will form a good ground for a legal separation must be very serious and such as amounts to extreme cruelty, entirely subverting the family relations by rendering the association intolerable. It is not confined to mere physical violence, which is by no means the worst injury that can be inflicted on persons of refined sensibility, but the grievance of whatever kind must be of the most aggravated nature to justify a divorce.—Cooper v. Cooper, 17/210; Chaffee v. Chaffee, 15/186-7. A long continued course of conduct, which, without the fault of the wife, results in making the marriage relation unendurable and in driving her from her husband's home is clearly a case of extreme cruelty.—Briggs v. Briggs, 20/45-6. So is the persistent circulation of false and slanderous reports derogatory to the wife's character for chastity.—Goodman v. Goodman, 26/417. Calling her vile, obscene and opprobrious names in the presence of others.—Id. 418; Warner v. Warner, 54/492; Whitacre v. Whitacre, 64/232. Neglecting her in critical illness and addressing her in harsh and brutal language.—Hoyt v. Hoyt, 56/50. Accusing her in letters, of adultery, perjury, lying and fraud.—Walsh v. Walsh, 61/554. Profanity and violence toward the wife and family, breaking furniture and dishes, threatening his wife and daughter and driving them out of the house with a horsewhip.—Berryman v. Berryman, 59/608. Turning the wife and her daughter out of doors and making their separation the condition of taking her back again.—Friend v. Friend, 53/543. Forcing the wife to do more work than she is able to do in her state of health and thus compelling her to leave him.—DeZwaan v. DeZwaan, 91/279. Communicating to her a venereal disease.—Canfield v. Canfield, 34/519; Holthoefer v. Holthoefer, 47/261. But the fact that a wife of unsuspected chastity has such a disease is not sufficient evidence that it was communicated to her by the husband.—Id. It is extreme cruelty to the wife for her husband to consort openly with loose females and express his preference for them.—McClung v. McClung, 40/498. Profane, obscene and insulting language, habitually indulged towards a person of a sensitive nature and refined feelings, may, in some cases, amount to extreme cruelty.—Bennett v. Bennett, 26/484; Briggs v. Briggs, 20/34; Goodman v. Goodman, 26/417. See Palmer v. Palmer, 45/150; Kline v. Kline, 50/438. See McCue v. McCue, 191/1. It is extreme cruelty for a wife to treat her husband habitually and persistently in the most offensive and opprobrious manner, accusing him in public and private of infamous conduct in violation of his marriage obligations and calling him by the vilest epithets, so as to publicly disgrace him and endanger his means of subsistence, dogging him personally and setting others to spy upon him.—Whitmore v. Whitmore, 49/417. Refusing to cohabit with him and driving him from the home, which he had decided to her with all the household furniture.—Menzer v. Menzer, 83/319. A single act of causeless violence is not sufficient if its consequences are evanescent and leave the relations of the parties substantially undisturbed.—Briggs v. Briggs, 20/45. Nor are mutual wranglings.—Cooper v. Cooper, 17/210; Rose v. Rose, 50/92; Beller v. Beller, 50/51. Nor a continual succession of petty annoyances, complaints, faultfindings, etc.—Johnson v. Johnson, 49/640. Nor the failure to change habits of frugality to habits of liberality.—Runkle v. Runkle, 96/493. Nor mere irascibility and harshness, especially when purposely provoked by tantalizing conduct.—German v. German, 57/256. Nor incompatibility of temper.—Morrison v. Morrison, 64/58. Nor violence committed during a quarrel, in which the husband suffers as much as the wife.—Soper v. Soper, 29/306. Nor ill treatment

soon after marriage, if followed by a peaceable and generally harmonious life for years.—*Rayner v. Rayner*, 49 / 600. See also *Cox v. Cox*, 35 / 461; *Lapp v. Lapp*, 43 / 287. As to when vile and indecent language will not be sufficient.—*Briggs v. Briggs*, 20 / 43; *Holmes v. Holmes*, 44 / 555. Harsh and recriminatory language.—*Bishop v. Bishop*, 17 / 211. Neglect to look after her household affairs.—*Bennett v. Bennett*, 24 / 484. Cruelty to the children.—*Chaffee v. Chaffee*, 15 / 186. But the husband cannot complain of cruelty when he is at the same time denying the wife's right to any consideration.—*Holmes v. Holmes*, 44 / 555. Where both are found guilty of conduct which constitutes cause for divorce, the bills will be dismissed.—*Hoff v. Hoff*, 48 / 281. Condonation of cruelty.—*Tackaberry v. Tackaberry*, 101 / 102; *Runkle v. Runkle*, 96 / 493. Acts of cruelty of a husband towards his wife which have been condoned are renewed by a subsequent act of cruelty.—*Stanton v. Stanton*, 197 / 161. Condonation of an act of extreme cruelty on the part of a husband towards his wife constitutes a complete defense in a subsequent suit where the acts have not been repeated and no other acts are relied upon.—*Jobb v. Jobb*, 199 / 555. A decree of divorce for extreme cruelty is not res judicata of the question of fact, so that it cannot be contested by the husband in a suit by a third person for necessities furnished the wife, during divorce proceedings.—*Corry v. Lockey*, 105 / 363. Compelling a wife to do manual labor on the farm, treating her brutally, etc.—*Stark v. Stark*, 129 / 153. Abuse of sexual relations.—*White v. White*, 135 / 271. Refusal of a wife to cohabit with her husband for three years is extreme cruelty warranting a divorce.—*Campbell v. Campbell*, 149 / 147. See also *Case v. Case*, 159 / 491. The action of a wife in repeatedly without cause accusing her husband of the offense of adultery is extreme cruelty warranting a divorce.—*Id.* An application for divorce on the ground of extreme cruelty, supported by sufficient testimony, may not be refused because the complainant had been twice previously divorced, and on the second occasion for her own fault.—*Orton v. Orton*, 159 / 236. Calling his wife vile names, accusing her of theft and infidelity constitute extreme cruelty on the part of the husband.—*Delor v. Delor*, 159 / 624. Unfounded charges by a wife against her husband and his daughter, to the effect they were guilty of immoral conduct with third persons, sustains a decree for divorce on the ground of extreme cruelty.—*Kraft v. Kraft*, 160 / 654. See *Begrow v. Begrow*, 162 / 349; *Murray v. Murray*, 169 / 388; *McDuffee v. McDuffee*, 169 / 410; *Krusinski v. Krusinski*, 170 / 561; *Bearinger v. Bearinger*, 170 / 661; *Smith v. Smith*, 172 / 177; *Hall v. Hall*, 172 / 210; *Austin v. Austin*, 172 / 620; *Bowen v. Bowen*, 179 / 574. The use of profane language by a husband toward a refined wife constitutes extreme cruelty and is ground for a divorce.—*Emery v. Emery*, 181 / 146; *Bloss v. Bloss*, 187 / 425.

See *Cunningham v. Cunningham*, 187 / 68; *Culley v. Culley*, 189 / 496. Facts stated held not to constitute extreme cruelty or such a neglect to support as to justify a decree of divorce.—*Wilson v. Wilson*, 185 / 387. See *Tuffelmire v. Tuffelmire*, 192 / 147. Authorities on profanity and obscenity as grounds for divorce are collected in a note in 12 L. R. A. (U. S.) 820. See *Carey v. Carey*, 192 / 684. Evidence sufficient to warrant divorce in plaintiff's favor on the ground of extreme cruelty where the defendant wife refused to cohabit with the husband, tried to get his property away from him, and refused to provide meals for him and look after his comfort.—*Lietzau v. Lietzau*, 197 / 395.

PLEADINGS AND PROOFS: The specific acts on which the charge rests must be set out in the bill and they ought to be satisfactorily established; and evidence of other acts, which serve to give character to the specific acts proved, is admissible.—*Briggs v. Briggs*, 20 / 41. See *Bennett v. Bennett*, 24 / 482. And where the bill fails to set forth any specific acts of cruelty, no proof is admissible on that branch of the case.—*Dashback v. Dashback*, 62 / 323. Under a bill for divorce for gross, wanton and cruel refusal to provide suitable maintenance, evidence of the use of insulting and abusive language is admissible.—*Cary v. Cary*, 106 / 646. Sufficiency of averment of marriage.—*Flannigan v. Flannigan*, 116 / 185. Insufficiency of evidence, prejudice of children.—*Parkinson v. Parkinson*, 134 / 434. Upon defendant's cross bill for a divorce, the court should not set aside a former decree of the court of chancery granting the wife a divorce from her first husband without a properly verified answer presenting the matter of affirmative defense.—*Van Slyke v. Van Slyke*, 186 / 324. See *Eistedt v. Eistedt*, 187 / 387.

FAILURE TO SUPPORT: A bill charging that the husband has been guilty of inhuman and cruel treatment and has grossly, wantonly and cruelly refused and neglected to provide suitable maintenance for her, and has grossly and cruelly refused to support, he being of sufficient ability, sufficiently sets forth a cause for a limited divorce under this section. All circumstances, tending to show that the refusal and neglect were as charged, or rendering it unsafe and improper for the complainant to reside and cohabit with the defendant, are admissible without specification of particular acts.—*Brown v. Brown*, 22 / 242. As to what acts will justify a wife in leaving her husband and seeking support elsewhere, see *Brown v. Brown*, 22 / 242; *Randall v. Randall*, 37 / 574. And when she is justified in so living apart from him, he is liable for her support elsewhere.—*Page v. Page*, 51 / 88. Willingness to support her at his home is no defense to her right of support elsewhere, if his treatment is such as to make it unsafe or improper for her to reside and cohabit with him.—*Brown v. Brown*, 22 / 242. A wife's obligation to render family services is co-extensive with the husband's obligation to support her; and an obligation to support her elsewhere than at his home can arise only by his turning her out of doors or by being guilty of such misconduct as would justify her in leaving him.—*Randall v. Randall*, 37 / 574. The wife

is entitled to support at the husband's domicile.—*Snyder v. People*, 26 / 110. See *Chaffee v. Chaffee*, 15 / 187; *Whitacre v. Whitacre*, 64 / 232; *Downey v. Downey*, 135 / 265; *Stewart v. Stewart*, 155 / 423; *Shelhart v. Shelhart*, 195 / 145. When the husband is of good health and sufficient ability to earn a living for the wife, and the wife is without means of support, except such as she earns for herself as a telephone operator, it is clear that the defendant's refusal to support is gross, wanton and cruel within the meaning of the statute.—*Gillatly v. Gillatly*, 185 / 382.

DECREE OF SEPARATION: See *Sawyer v. Sawyer*, Walk. 53; *Skillman v. Skillman*, 18 / 458. See *Sullivan v. Sullivan*, 112 / 674, as to divorce a vinculo. The court may decree absolute divorce instead of separate maintenance as prayed for in the bill.—*McCue v. McCue*, 191 / 1.

UTTER DESERTION: See notes to preceding sections subd. 4.

When divorce
may be
decreed for
certain
causes.

(62) § 11399. SEC. 8. A divorce from the bonds of matrimony may be decreed for either of the causes mentioned in the preceding section whenever, in the opinion of the court, the circumstances of the case shall be such that it will be discreet and proper so to do; but no divorce from the bonds of matrimony for either of the causes mentioned in the preceding section shall be entered in any case where the same is not asked for by the complainant in the bill of complaint filed therein, or by the defendant on a cross-bill unless the court hearing the evidence shall deem it for the best interests of the parties to grant a divorce from the bonds of matrimony and in that event the court may grant such divorce.

When decree
not to be
entered.

This statute authorizes the courts, where a case is made out for a permanent separation, to decree an absolute divorce, if it appears proper to do so. This is not done to meet the desire of the parties, but on grounds of public policy, to prevent the mischiefs arising from turning out into the world, in enforced celibacy, persons who are neither married nor unmarried.—*Burlage v. Burlage*, 65 / 627. A decree a vinculo may be entered by the court, especially where it accords with the prayer of the bill, although only a decree of separation is asked.—*Sullivan v. Sullivan*, 112 / 674. See *Jamison v. Ramsey*, 128 / 315; *Downey v. Downey*, 135 / 267; *Orton v. Orton*, 159 / 239; *Horning v. Horning*, 162 / 133. A cross bill can be sustained only on matters growing out of the original bill and embraced in it.—*Root v. Root*, 164 / 638. In divorce, as in other causes in equity, a complaining party must come with clean hands.—Id.

Divorce, how
obtained.

(63) § 11400. SEC. 9. No decree of divorce shall be granted by any court in this state in any case unless:

Plaintiff to be
a resident.

First, The party applying therefor shall have resided in this state for one year immediately preceding the time of filing the bill or petition therefor; or

Marriage
solemnized
in state.

Second, The marriage which it is sought to dissolve was solemnized in this state, and the party applying for such divorce shall have resided in this state from the time of such marriage until the time of bringing such suit for divorce.

Cases in
which
granted.

No decree of divorce shall be granted in any case except when one of the following facts exist:

First, When the defendant is domiciled in this state at the time the bill or petition for divorce is filed; or

Defendant to
be resident.

Second, When the defendant shall have been domiciled in this state when the cause for divorce alleged in the bill or petition arose; or

Service of
notice within
state.

Third, When the defendant shall have been brought in by publication, or shall have been personally served with process in this state, or shall have been personally served with a copy of the order for appearance and publication within this state or elsewhere, or has voluntarily appeared in such action or

proceeding. Whenever any such order shall be served outside this state, proof of such service shall be made by the affidavit of the person who shall serve the same, made before a justice of the peace or notary public, and when such affidavit shall be made outside this state, it shall have attached thereto the certificate of the clerk of a court of record, certifying to the official character of the justice or notary, and the genuineness of his signature to the jurat of the affidavit.

Without this state.

In all cases where divorce is asked on the ground of desertion, such desertion shall be deemed to have occurred and taken place in this state, for the purpose of this act, when the parties, complainant and defendant, shall have been actually and in good faith domiciled in this state at the time the defendant actually abandoned the complainant, without the proof of his or her actual intent at the time of such abandonment. Whenever the cause or causes for divorce charged in the bill or petition shall have occurred out of this state, no decree of divorce shall be granted unless the complainant or defendant, one or both of them, shall have resided in this state for two years immediately preceding the filing of the bill or petition for such divorce. No proofs or testimony shall be taken in any case for divorce until the expiration of two months from the time of filing the bill or petition therefor, except where the cause for divorce is desertion, or when the testimony is taken conditionally for the purpose of perpetuating such testimony. When the defendant in any case for divorce shall not be domiciled in this state at the time of commencing such suit, or shall not have been domiciled therein at the time the cause for divorce arose, before any decree of divorce shall be granted the complainant must prove that the parties have actually lived and cohabited together as husband and wife within this state, or that the complainant has in good faith resided in this state for two years immediately preceding the filing of the bill or petition for divorce.

When desertion deemed to have occurred in state.

Taking of proofs, etc.

Proof necessary when defendant outside of state.

As to residence see note to section 60. See *Filer v. Filer*, 77 / 469; *Daly v. Judge*, 102 / 395; *Clutton v. Clutton*, 108 / 267; *Bentley v. Judge*, 110 / 626; *Jamison v. Ramsey*, 128 / 315. This section is mandatory and no court in this state has any authority to grant a decree for divorce unless it affirmatively appears that the complainant has resided within the state for one year, immediately preceding the filing of the bill.—*Bradfield v. Bradfield*, 154 / 115. See *Hoffman v. Hoffman*, 155 / 328.

(64) § 11401. SEC. 10. No divorce shall be decreed in any case when it shall appear that the petition or bill therefor was founded in or exhibited by collusion between the parties; and the oath or affirmation administered to the complainant in swearing to such petition or bill shall, in addition to all other legal requirements, recite the following: "And you do solemnly swear (or affirm), that there is no collusion, understanding or agreement whatever between yourself and the defendant herein in relation to your application for divorce." And no divorce shall be decreed in any case where the party complaining shall be guilty of the same crime or misconduct charged against the respondent.

Idem.

Oath of complaint.

COLLUSION: The complainant must make oath that the acts charged as causes for divorce were not committed with the consent, connivance, privity or procurement of the complainant.—*Briggs v. Briggs*, 20/40; *People v. McCaffrey*, 75/123. The amendment of 1887 gives the above rule the force of statute law.—*Id.*; *Ayres v. Gartner*, 90/381. It is mandatory that the oath shall recite that the complainant swears there is no collusion, understanding or agreement, etc.—*Ayres v. Gartner*, 90/381; *McWilliams v. Lenawee Judge*, 142/226. But where the jurat states that "there is no agreement or understanding" and the words "collusion" and "whatever" are omitted it is too late to raise the question in the supreme court.—*Holcomb v. Holcomb*, 100/422-3. But the bill may in such case be remanded for amendment, where necessary.—*Id.*; *Harrison v. Harrison*, 94/561. It is also within the discretion of the court to permit the amendment of the verification after decree.—*Daly v. Judge*, 102/394. If any new fact is introduced into the bill by way of amendment, the bill must be sworn to again to meet this requirement.—*Green v. Green*, 26/437. See *Tackaberry v. Tackaberry*, 101/104. As to collusion, see *Sawyer v. Sawyer*, Walk. 52; *Emmons v. Emmons*, Walk. 532. There can be no decree of divorce where there is collusion.—*Porritt v. Porritt*, 18/426; *People v. Dawell*, 25/257-8; *Friend v. Friend*, 53/544. This statute does not apply merely in cases where, without any cause for divorce, parties agree together collusively to obtain a decree. It is immaterial whether there is cause for divorce or not. The statute is based on public policy and forbids the annulment of the marriage contract by any agreement of the parties, as, for instance, an agreement by the wife to accept \$500 in lieu of her claims as wife or widow in her husband's property, with the further agreement, if he seeks a divorce, not to put him to additional costs or claim alimony.—*Thompson v. Thompson*, 70/62. Arrangements and understandings immediately after the commencement of proceedings for divorce, with a view to securing such divorce, are collusive and an attempted fraud upon the law.—*Briggs v. Briggs*, 20/45. The entry of appearance by defendant and the undue acceleration of proceedings indicate collusion.—*People v. Dawell*, 25/253. Uninterrupted cohabitation during the progress of the suit is a sign of collusion.—*Porritt v. Porritt*, 18/426. If an answer is withdrawn and the complainant permitted to take testimony ex parte, the proceedings should be closely scrutinized and no decree should be granted without satisfactory evidence that there is no collusion.—*Leavitt v. Leavitt*, 13/455-6. Where a wife obtained a divorce on a bill denying collusion, a subsequent bill filed by her to set aside the decree on the ground of collusion was dismissed, in the absence of any showing that she had been defrauded.—*Simons v. Simons*, 47/253. A divorce obtained by collusion is not to be suffered to stand, but the decree is not to be treated as void, until set aside or reversed by a competent court.—*People v. Dawell*, 25/248-9. See *McWilliams v. Lenawee Judge*, 142/226. No evidence of collusion warranting the court in denying a decree for divorce is presented by showing that the husband consulted a lawyer concerning his right to a divorce and his wife thereafter refused for about three years to perform her marital duties, or by the fact that the parties adjusted their property matters by an agreement of the husband to pay her alimony in a lump sum.—*Case v. Case*, 159/492.

GUILTY OF SAME MISCONDUCT: If both are found guilty of conduct which constitutes a statutory cause for divorce both bills should be dismissed.—*Hoff v. Hoff*, 48/281. See also *Warner v. Warner*, 54/494-5; *Morrison v. Morrison*, 64/53; *Sissung v. Sissung*, 65/179; *Minde v. Minde*, 65/633; *Peck v. Peck*, 66/586; *Smith v. Smith*, 146/688; *Kellogg v. Kellogg*, 171/518.

Bill or petition by wife in her own name; answer without oath.

(65) § 11402. SEC. 11. A petition or bill for a divorce may be exhibited by a wife in her own name, as well as a husband; and in all cases the respondent may answer such bill without oath or affirmation.

Having the power to bring suit and being in such suit responsible for costs, the wife must be held competent to contract for the services of an attorney to represent her rights.—*Wolcott v. Patterson*, 100/229. But a contract between her and her solicitors in advance of a decree for divorce and alimony, giving them one-half of such alimony, is void as against public policy.—*Jordan v. Westerman*, 62/170.

Suits, how conducted.

(66) § 11403. SEC. 12. Suits to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as other suits in courts of equity; and the court shall have the power to award issues, to decree costs, and to enforce its decrees, as in other cases.

A divorce bill cannot be amended by substituting a prayer that the marriage be annulled.—*Schafberg v. Schafberg*, 52/429. Case remanded to adduce proofs as to defendant's and complainant's property.—*Reynolds v. Reynolds*, 92/104.

(67) § 11404. SEC. 13. In every suit brought, either for a divorce, or for a separation, the court may, in its discretion, require the husband to pay any sums necessary to enable the wife to carry on or defend the suit during its pendency; and it may decree costs against either party, and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

Court may require husband to pay expenses.

Costs.

TEMPORARY ALIMONY: The statute clearly indicates that such proceedings are to be maintained at the cost of the wife, unless the court shall relieve her of such cost by an order for expense money to be paid by her husband.—*Wolcott v. Patterson*, 100 / 229. In a suit by or against a wife for a divorce, where she has no separate property of her own to support herself and enable her to carry on her suit, or make her defense, and her husband has property, the court will compel him to make a suitable allowance for her maintenance pending the suit, and to furnish her with the means of employing counsel.—*Story v. Story*, Walk. 421-2; *Jordan v. Westerman*, 62 / 178. The power to allow temporary alimony pending divorce proceedings and to compel the husband to furnish the wife with pecuniary means to defend or prosecute the suit on her behalf is incident to divorce cases. The statute makes no mention of temporary alimony, but it is only confirmatory of the common law.—*Goldsmith v. Goldsmith*, 6 / 286. The right to temporary alimony has been recognized without question in all divorce suits where the circumstances required it. Whether this section includes advances for support, or must be strictly confined to legal expenses, is not very important, as the allowances have always been upheld.—*Haines v. Haines*, 35 / 143-4. But alimony will not be allowed on a bill that does not bring the complainant within any recognized equity.—*Lipp v. Lipp*, 43 / 287. Nor will it be allowed, except where it is made to appear, by the bill or petition, that the wife has no separate property of her own to support herself and enable her to carry on her suit and that her husband has property.—*Ross v. Ross*, 47 / 187; *Story v. Story*, Walk. 421. But temporary alimony is properly allowed even where the wife has independent property of her own, if in her application therefor she shows what her property is and that her income from it is insufficient for her support.—*Rose v. Rose*, 53 / 585 (explaining *Ross v. Ross*, supra). Where her property is unproductive or unavailable or under the control of her husband, it is proper for the court to make an order for temporary alimony.—*Ross v. Griffin*, 53 / 8; *Potts v. Potts*, 68 / 495. Under the statute, materially changing the old common law rule respecting the rights of married women to acquire and possess property, there is no presumption that the wife has no property.—*Ross v. Ross*, 47 / 187. The husband's affidavit, denying the ground on which the wife asks a divorce, is no answer to an application for alimony, but may be read to aid the court in determining the amount to be allowed.—*Story v. Story*, Walk. 421. Amount.—The amount of temporary alimony to be allowed must be left to the discretion of the court.—*Ross v. Griffin*, 53 / 7; *Froman v. Froman*, 53 / 581; *Rose v. Rose*, 53 / 585; *Jordan v. Westerman*, 62 / 178; *Rossmann v. Rossmann*, 62 / 429. The allowance of temporary support and expenses should be confined to what may be reasonably regarded as necessary in each case.—*Haines v. Haines*, 35 / 144. When the husband's income from his property cannot be reasonably expected to be sufficient for the support of all the family, without the wife's assistance, the allowance ought not to be so large as to relieve the wife from any necessity for doing anything towards her own maintenance.—*Brown v. Brown*, 22 / 242. Reference may be made to a commissioner to inquire into the pecuniary circumstances of defendant and report what amount ought to be allowed.—*Story v. Story*, Walk. 422. Not assignable.—The allowance of temporary alimony is not assignable.—*Jordan v. Westerman*, 62 / 178; *Hackley v. Judge*, 58 / 454. Consult *Clutton v. Clutton*, 106 / 690. The law will not imply a promise on the part of a father to pay for necessities furnished his infant child while in the custody of its mother, who had left the father's home without cause.—*Hyde v. Leisenring*, 107 / 490. Allowance to wife.—*Webb v. Wayne Judge*, 144 / 674. Minority as a defense.—*Austin v. Austin*, 167 / 164.

ALLOWANCE ON APPEAL: Temporary alimony and expenses may be continued or allowed up to the final determination of the cause on appeal.—*Bishop v. Bishop*, 17 / 218; *Van Voorhis v. Van Voorhis*, 90 / 276. Allowance on appeal.—*Goldsmith v. Goldsmith*, 6 / 285; *Chaffee v. Chaffee*, 14 / 463; *Cooper v. Cooper*, 17 / 211; *Skillman v. Skillman*, 18 / 458; *McClung v. McClung*, 40 / 498-9. Damages for vexatious delays in paying allowances.—*McClung v. McClung*, 40 / 499. The administrator of the deceased complainant will not be compelled to pay alimony on an appeal taken after the husband's death.—*Shafer v. Shafer*, 30 / 163. The allowance made by the circuit court will not be increased on appeal without further evidence.—*Goodman v. Goodman*, 26 / 417. But alimony is not a matter of course in the supreme court. When the wife appeals, there must be some proof of the reasonableness and good faith of the appeal and also proof that it is necessary to grant alimony to prevent a failure of justice and to save the wife from suffering.—*Ziegenfuss v. Ziegenfuss*, 21 / 414; *Holthoefer v. Holthoefer*, 47 / 643. And the amount may be regulated according to the behavior of the parties.—*Hoff v. Hoff*, 48 / 283. Or discontinued on account of the

wife's misconduct.—*Goldsmith v. Goldsmith*, 6/285. As to the allowance of costs in the supreme court, see *Chaffee v. Chaffee*, 14/463; *Skillman v. Skillman*, 18/458; *Lapham v. Lapham*, 40/527; *Stevens v. Stevens*, 49/504; *Whitmore v. Whitmore*, 49/418. Allowance to solicitor in the supreme court.—*Stafford v. Stafford*, 53/522. An allowance may be made by the supreme court for solicitors' fees and expenses in an appeal from a decree refusing complainant a divorce, after the filing of a claim of appeal, although the testimony has not been settled or the return made.—*Breen v. Breen*, 159/389. See also *Nichols v. Nichols*, 163/107. See *Bloss v. Bloss*, 187/425. The court awards to wife the household furniture except certain articles given to husband by relatives and peculiarly suitable to his use.—*Id.* The court awards a further sum as counsel fee in addition to its award of \$50 for expenses of appeal.—*Id.*

NO APPEAL FROM ALLOWANCE: The order granting temporary alimony is discretionary with the circuit court and is not appealable, nor will it be reviewed or considered collaterally.—*Haines v. Haines*, 35/144; *Lapham v. Lapham*, 40/527; *Cooper v. Cooper*, 40/528; *Ross v. Ross*, 47/185; *Ross v. Griffin*, 53/7; *Froman v. Froman*, 53/584; *Rossman v. Rossman*, 62/429. Unless there has been gross abuse of discretion.—*Id.*

ENFORCEMENT OF ORDER: Payment of temporary alimony and expenses is to be enforced by contempt proceedings.—*Haines v. Haines*, 35/145. But a personal demand is prerequisite to a commitment for contempt in not paying alimony.—*Edison v. Edison*, 56/185. Except where a husband informs his wife that he will not pay temporary alimony awarded her by the court.—*Potts v. Potts*, 68/492. Such allowances do not come within the provision authorizing the collection of costs by execution.—*Id.* See *North v. North*, 39/67; *Palmer v. Palmer*, 45/152. See *Peltier v. Peltier*, 114/28. But a defendant cannot be committed for contempt upon an ex parte showing of his non-performance of the order, without any opportunity to present what he has to say in his own justification.—*Stellar v. Stellar*, 25/160. And he is not in contempt until a proper demand has been made and payment refused.—*Brown v. Brown*, 22/299; *Dillon v. Shiawassee Judge*, 131/574. An order committing a defendant for contempt in refusing to pay temporary alimony is appealable.—*Ross v. Ross*, 47/187. But proceedings resulting in the commitment of a party for non-payment of alimony, apparently regular on their face, will not be reviewed on habeas corpus.—*Matter of Bissell*, 40/63. An order adjudging a party guilty of contempt, and requiring him to pay a certain sum within 10 days or be imprisoned, is reviewable by mandamus: appeal not being sufficiently expeditious.—*Dillon v. Judge*, 131/574. See *Ervay v. Ervay*, 120/525.

ATTORNEY'S FEES: Under this section, providing that in a suit for divorce the court may, in its discretion, require the husband to pay any sums necessary to enable the wife to carry on or defend the suit during its pendency and may decree costs against either party, the rights of an attorney for a wife as complainant in a divorce suit under a contract for prosecution of the case for what his services are reasonably worth, are not waived by the allowance by the court, and acceptance of, a sum less than the reasonable value of such services, where the order is on account of "attorney's fees" and not to "relieve" the wife from the cost of attorney's fees.—*Culley v. Badgley*, 196/414. See also *Young v. Young*, 196/316.

Court may prohibit restraint of liberty of wife.

(68) § 11405. SEC. 14. After the exhibiting of a petition or bill in a suit to annul a marriage or for a divorce, whether from the bond of matrimony or from bed and board, the court may at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty during the pendency of the suit.

Care and maintenance of children during pendency of suit.

(69) § 11406. SEC. 15. The court may, in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance, during the pendency of such suit, as shall be deemed proper and necessary, and for the benefit of the children.

Glick v. Glick, 110/304.

Order in relation to care, etc., of children on final decree.

(70) § 11407. SEC. 16. Upon pronouncing a sentence or decree of nullity of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony or from bed and board, the court may make such further decree as it shall deem just and proper, concerning the care, custody and maintenance of the minor children of the parties, and may deter-

mine with which of the parents the children, or any of them, shall remain.

As to custody of children in case of separation, see section 98.

Upon a decree granted to the wife on the ground of cruelty, she is *prima facie* entitled to the custody of the children of tender age.—*Klein v. Klein*, 47 / 518. Although the children may remain with the mother, the father's legal duty to them is to provide for their support; and as against the public and the children, he cannot throw off this duty.—*Courtright v. Courtright*, 40 / 633. The law will not imply a promise on the part of a father to pay for necessities furnished his infant child while in the custody of its mother, who had left the father's home without cause.—*Hyde v. Leisenring*, 107 / 490; *Horning v. Horning*, 107 / 587; *Weiss v. Weiss*, 174 / 431. One who seeks to hold the father liable for necessities furnished under such circumstances must show that the mother was justified in taking the child away.—*Id.* See *Dailey v. Dailey*, 166 / 170.

(71) § 11408. SEC. 17. The court may, from time to time afterwards, on the petition of either of the parents, revise and alter such decree concerning the care, custody and maintenance of the children, or any of them, and make a new decree concerning the same, as the circumstances of the parents, and the benefit of the children, shall require.

Decree may be revised, and new decree made.

Divorced wife awarded the custody of her infant daughter because the father failed in his agreement, made before the divorce granted, to properly care for her.—*Flory v. Ostrom*, 92 / 622. A decree for alimony, in a case for divorce a vinculo, made without reservation, either in the decree itself or the statute, of power to amend or modify, although payable in installments, is final, and cannot be changed after enrollment.—*Mayer v. Mayer*, 154 / 386. Decree for alimony made in another state.—*Id.* The court has jurisdiction, after granting a divorce and giving complainant the custody of the child until further order of the court, to entertain a petition by defendant for a change in the decree as to the custody of the child, and, after hearing, grant it.—*Griffin v. Griffin*, 154 / 536. The right to the custody of children is not so concluded by the decree as to preclude a subsequent modification.—*Stone v. Stone*, 161 / 566.

(72) § 11409. SEC. 18. Whenever the nullity of a marriage, or a divorce from the bond of matrimony for any cause excepting that of adultery committed by the wife, shall be decreed, and when the husband shall be sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate, in like manner as if her husband were dead.

When wife entitled to her real estate.

See *Johnson v. Johnson*, Walk. Ch. 313, and section 11474, C. L. 1915.

A husband and wife take as tenants by entirety, and not as joint tenants, under a joint deed to both; and the estate thus created, with the attendant right of survivorship, is not affected by the decree of divorce.—*Lewis's Appeal*, 85 / 340. A court of equity has power, upon granting a divorce, to adjust the property rights of the parties and to compel an accounting by the husband of money of the wife in his hands, under § 12309, C. L. 1915, providing that a plaintiff may join in one action, at law or in equity, as many causes of action as he may have against the defendant.—*Stanton v. Stanton*, 197 / 161.

(73) § 11410. SEC. 19. Upon every such dissolution of a marriage as is specified in the preceding section, and also upon every divorce from bed and board, the court may make a further decree for restoring to the wife the whole, or such part as it shall deem just and reasonable, of the personal estate that shall have come to the husband by reason of the marriage, or for awarding to her the value thereof, to be paid by her husband in money.

Restoration of personal estate to wife.

Harrison v. Harrison, 49 / 240. The court has no jurisdiction to settle the claims of the wife against the husband for her separate property in the divorce proceedings.—*Letts v. Letts*, 73 / 145; *Peck v. Peck*, 66 / 586.

Trustees,
when may be
appointed.

(74) § 11411. SEC. 20. Upon every divorce for adultery committed by the husband, and upon every divorce from bed and board for any cause, when any personal estate of the wife, or money in lieu thereof, shall be awarded to her, as provided in the preceding section, the court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it to be delivered or paid into the hands of a trustee or trustees, to be appointed by the court, upon trust to invest the same, and to apply the income thereof to the support and maintenance of the wife, and of the minor children of the marriage, or any of them, in such manner as the court shall direct.

Duties of
trustees,
their bonds.

(75) § 11412. SEC. 21. Such trustees shall also pay over the principal sum to the wife and children of the marriage, when ordered by the court, in such proportions, and at such times as the court shall direct, regard being had, in the disposition of the said income, as well as of the principal sum, to the situation and circumstances of the wife and children; and the said trustees shall give such bonds as the court shall require, for the faithful performance of their trust.

Husband may
be required to
disclose on
oath.

(76) § 11413. SEC. 22. Whenever the court shall think proper to award to the wife any of her personal estate, or any money in lieu thereof, in pursuance of the foregoing provisions, such court may require the husband to disclose on oath what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof still remains in his hands.

Court may
further
decree ali-
mony.

(77) § 11414. SEC. 23. Upon every divorce from the bond of matrimony for any cause except that of adultery committed by the wife, and also upon every divorce from bed and board for any cause, if the estate and effects awarded to the wife shall be insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, the court may further decree to her such part of the personal estate of the husband and such alimony out of his estate real and personal, to be paid to her in gross or otherwise as it shall deem just and reasonable, having regard to the ability of the husband and the character and situation of the parties, and all the other circumstances of the case.

For punishment for contempt for disobedience or failure to comply with order for payment of alimony, etc., see sub. 5, of § 12268, C. L. 1915; see also sections 118-119 of this compilation.

ALIMONY: *Sawyer v. Sawyer*, Walk. 53. A divorce from the bonds of matrimony, or from bed and board, is necessary before the court may decree to the wife alimony out of the personal or real estate of the husband.—*Nichols v. Nichols*, 169 / 540. Alimony is incident to the marriage relation, and, as a rule contingent on divorce relations.—*Judson v. Judson*, 171 / 188, 189. The cause may be referred to a circuit court commissioner to take proofs concerning the defendant's property, to determine what would be a suitable allowance for alimony.—*Briggs v. Briggs*, 20 / 46. See *Reynolds v. Reynolds*, 92 / 104. Alimony should not be lavishly allowed where the wife is young and healthy, brought no money to her husband and did not aid him in accumulating any, obtained a previous divorce to marry him and lived with him only a short time.—*Cummings v. Cummings*, 50 / 305. Property of wife considered in fixing alimony.—*Sullivan v. Sullivan*, 170 / 557. Alimony refused where the wife had already received a considerable portion of the husband's estate.—*Stevens v. Stevens*, 49 / 504. What not deemed excessive alimony.—

Berryman v. Berryman, 59 / 605; Reed v. Reed, 86 / 600. An award of alimony may be made in gross instead of annual allowances.—Hamilton v. Hamilton, 37 / 606; Seibly v. Judge, 105 / 584. And an allowance payable in installments may, after the husband's death, be modified to one in gross payable out of his estate.—Pingree v. Pingree, 170 / 36. For other cases of a gross allowance of alimony, see Skillman v. Skillman, 18 / 458; Taylor v. Gladwin, 40 / 232; McClung v. McClung, 40 / 494. It should be allowed in gross instead of by periodical payments in cases where the husband would be likely to vexatiously delay or withhold payments.—McClung v. McClung, 40 / 498. Where the allowance is in gross and the husband's property consists wholly of lands, he may be given his choice to pay in money or in lands.—Hamilton v. Hamilton, 37 / 607-8. What should be considered in fixing a gross sum.—Hornung v. Hornung, 107 / 587; Ferguson v. Ferguson, 147 / 673. Alimony awarded in gross is not intended as a division of the husband's estate, but as his contribution to the support of the wife.—Kiplinger v. Kiplinger, 172 / 552. When the husband's property is not sufficient for the support of all the family and they have been accustomed to rely upon their joint labor, the allowance should not be so large as to relieve the wife from doing anything for her own support.—Brown v. Brown, 22 / 242. Award increased on appeal.—Hoff v. Hoff, 48 / 281. The allowance can be questioned only on appeal and not collaterally.—Taylor v. Gladwin, 40 / 232. A bill for divorce, on the ground that defendant had obtained a divorce from complainant in another state, does not differ as regards the granting of alimony from any other divorce suit.—Wright v. Wright, 24 / 180. Where the bill does not ask for alimony and the decree does not award it, a motion to amend the decree by adding a reference to a commissioner to take proofs as to alimony, was properly denied. The proper remedy, if there is any, is by supplemental bill in the nature of a bill or review.—Jordan v. Jordan, 53 / 550. Proofs bearing on the question of permanent alimony ought not to be taken, until it has been determined whether a divorce shall be decreed.—Rea v. Rea, 53 / 40. When a decree for alimony cannot be impeached.—Reeg v. Burnham, 55 / 39. The decree for alimony vests in the wife no absolute right to the allowance.—Perkins v. Perkins, 10 / 426; Jordan v. Westerman, 62 / 170. A bill for alimony merely cannot be maintained.—Peltier v. Peltier, Har. 19; Judson v. Judson, 171 / 189. As to the granting of alimony where divorce is denied, see Chaffee v. Chaffee, 15 / 184. Cooper v. Cooper, 17 / 205; Bishop v. Bishop, 17 / 211. Chancery courts have no inherent power to decree permanent alimony; it is a statutory power, incident to the jurisdiction over applications for divorce.—Perkins v. Perkins, 16 / 187. The court may sequester the real and personal estate, appoint a receiver thereof and cause the personal estate and the rents and profits of the real estate to be applied to the payment of the alimony.—Seibly v. Judge, 105 / 586. The court can determine in the first instance the right to the decree and reserve the question of alimony for subsequent adjudication. Id.; Rea v. Rea, 53 / 40. Lien of wife on land to secure alimony.—Glick v. Glick, 110 / 304; Brown v. Brown, 135 / 144. Stipulation between parties as to alimony.—McKelvey v. McKelvey, 112 / 274. Allowance to the wife for support of the children must be awarded to her, though for them.—Judson v. Judson, 171 / 189. The court cannot direct that the amount awarded for the support of a child be paid to its guardian instead of to the wife.—Swiney v. Swiney, 107 / 459. Ordinarily the question of whether or not permanent alimony shall be allowed is determined at the time the decree for divorce is announced (or, if not, it is later) by the same judge; but he may withhold the decision of the alimony question for decision later upon additional testimony, or upon the evidence produced at the hearing, if that subject has been gone into.—Adams v. Seibly, 115 / 402. Reasonableness of allowance.—Kirkland v. Kirkland, 111 / 166; Schabel v. Schabel, 115 / 487; Austin v. Austin, 172 / 620. A wife may be allowed alimony though the divorce is granted to her husband, where the divorce is granted for any cause other than adultery.—Lofvander v. Lofvander, 146 / 370. Excessive alimony.—Id. Not excessive.—Freund v. Freund, 174 / 337. A decree for alimony in a case for divorce a vinculo, made without reservation, either in the decree itself or the statute, of power to amend or modify, although payable in installments, is final, and cannot be changed after enrollment.—Mayer v. Mayer, 154 / 386. Decree for alimony made in another state.—Id. The interest of a wife in an estate by the entireties cannot be diminished by a decree for divorce.—Delor v. Delor, 159 / 624. The jurisdiction of the circuit court in chancery, in divorce proceedings, is strictly statutory, and the court has no inherent power to decree permanent alimony.—Maslen v. Anderson, 163 / 481; Bialy v. Bialy, 167 / 564; Perkins v. Perkins, 16 / 162; Baugh v. Baugh, 37 / 59; Peck v. Peck, 66 / 586; Peck v. Uhl, 66 / 592. Distinction has been made between alimony, strictly so called, and allowances for the maintenance of minor children.—In re Austin's Estate, 173 / 54. As to general subject of alimony see Heaton v. Heaton, 186 / 37; Fleming v. Fleming, 186 / 87; Van Slyke v. Van Slyke, 186 / 324. As to effect of husband's ability to earn as basis for alimony, see note in 4 L. R. A. (U. S.) 909. Monthly installments for life, instead of permanent alimony in a lump sum, should be given a wife where she is a woman of middle life, unable to go out to service, and subject to imposition by others.—Young v. Young, 196 / 316.

(78) § 11415. SEC. 24. When the marriage shall be dissolved by the husband being sentenced to imprisonment for life, and when a divorce shall be decreed for the cause of

When wife entitled to dower.

adultery committed by the husband, or for the misconduct or habitual drunkenness of the husband, or on account of his being sentenced to imprisonment for a term of three years or more, the wife shall be entitled to her dower in his lands in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

See note immediately following preceding section concerning punishment for contempt. For provisions in lieu of dower, see compiler's section 100. Secs. 25 and 26 repealed by act 39 of 1877.

DOWER: A wife who has obtained a divorce for adultery can thereafter maintain ejectment for dower in the lands of her husband, whether he be living or dead.—*Percival v. Percival*, 56 / 299; *Orth v. Orth*, 69 / 164; *Bowles v. Hoard*, 71 / 150. Extreme cruelty is such "misconduct" as is contemplated by this section.—*Rea v. Rea*, 63 / 257. A wife who has obtained a divorce from her husband on the ground of extreme cruelty is entitled to dower in his lands in same manner as if he were dead.—*Moross v. Moross*, 132 / 203. A divorced wife's right to dower in her husband's lands is not based upon the decree, but upon the statute, and therefore her right of action to recover possession is not barred in 10 years, but only by the 15 years allowed by the statute for the recovery of the possession of lands.—*Id.* The parties are competent to contract that in consideration of the wife foregoing the enforcement of her dower rights during the husband's lifetime he will make adequate provision for her by his will.—*Kundinger v. Kundinger*, 150 / 631. See also *Jordan v. Jordan*, 53 / 552.

Alimony to constitute lien on real estate.

Court may decree sale of property.

Court may decree division of real estate.

(79) § 11416. SEC. 27. In all cases where alimony or allowance for the support and education of minor children shall be decreed to the wife, the amount thereof shall constitute a lien upon such of the real and personal estate of the husband as the court by its decree shall direct, and in default of payment of the amount so decreed the court may decree the sale of the property against which such lien is decreed in the same manner and upon like notice as in suits for the foreclosure of mortgage liens: or the court may award execution for the collection of the same, or the court may sequester the real and personal estate of the husband and may appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate to be applied to the payment thereof or the court in lieu of a money allowance may decree such a division between the husband and wife of the real and personal estate of the husband or of the husband and wife by joint ownership or right as he shall deem to be equitable and just.

PERMANENT ALIMONY: See notes to section 77. This statute applies to permanent alimony only.—*Palmer v. Palmer*, 45 / 152. Prior to the amendment of 1877 a court of equity had no power to declare alimony to be a specific charge upon lands, or to direct such lands to be sold in default of payment.—*Perkins v. Perkins*, 16 / 162. A decree for alimony to be paid in land set off by a commissioner at a fair value, contemplates that it shall be set off according to the value of the property as shown by the testimony taken in the case and not by some new estimate after values have changed.—*McClung v. McClung*, 42 / 53. The court has the power to make the award against a husband for the support of children a charge upon his property and alter it from time to time, and on his death will fix the period for which payments must continue, calculate their present worth, and make the sum a lien upon his property with priority over all other claims of his widow, heirs, and next of kin, except rights of dower.—*Creyts v. Creyts*, 143 / 375. The court has power to determine what property belongs to the husband, and divide the same between the husband and wife.—*Carnahan v. Carnahan*, 143 / 390. A decree for alimony is not assignable.—*Fournier v. Clutton*, 146 / 298. On granting a divorce, real estate held by the parties as tenants by the entirety may be divided.—*Jeske v. Jeske*, 147 / 367; *Brasch v. Brasch*, 168 / 461. See *Brandau v. Brandau*, 166 / 462. See *Collins v. Collins*, 189 / 659; *Morrill v. Morrill*, 192 / 150; *Snay v. Snay*, 192 / 210. Court gives definition of permanent alimony.—*Mesler v. Jackson* Circuit Judge, 188 / 195. Court may confirm any agreement of the parties made after separation that

is just and reasonable and not the result of fraud or coercion and may enforce collection of alimony by contempt proceedings.—*Id.* See § 12268, C. L. 1915. The personal underwriting on the subpoena does not prevent the court from awarding alimony.—*Id.* Award of alimony declared excessive.—*Id.* While ordinarily property rights are adjusted in divorce proceedings, where this is not done, they may be settled later in a separate proceeding.—*Judd v. Judd*, 192 / 198. For authorities on the question of marital misconduct of one spouse avoiding gift by other spouse, see note in 35 L. R. A. (U. S.) 124. Effect of conveyance of real property from husband to wife, see 69 L. R. A. 379.

ENFORCING PAYMENT: This provision for an execution applies to permanent alimony only.—*Palmer v. Palmer*, 45 / 152. Execution now lies.—*Taylor v. Gladwin*, 40 / 232. Also to enforce the payment under an order of the court in divorce proceedings, of money to support the children.—*North v. North*, 39 / 67. Execution against wife requiring her to pay over to him certain money held in trust by her.—*Carnahan v. Carnahan*, 143 / 390. Contempt proceedings to enforce civil remedies not to be resorted to.—*Id.* Proceedings to foreclose the lien of a decree for alimony payable in installments may be begun whenever an installment is due and unpaid without waiting until the whole is due.—*Ulman v. Ulman*, 148 / 355. Contempt proceedings against the husband who neglects to pay alimony are contingent upon finding the husband within the jurisdiction of the court. A decree in such proceeding bars criminal proceedings under a charge of abandonment.—*Lacey v. Lacey*, 189 / 271.

(80) § 11417. SEC. 28. After a decree for alimony or other allowance, for the wife and children, or either of them, and also after a decree for the appointment of trustees, to receive and hold any property for the use of the wife or children as before provided, the court may, from time to time, on the petition of either of the parties, revise and alter such decree, respecting the amount of such alimony or allowance and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting any of the said matters which such court might have made in the original suit.

Court may alter decree for alimony, etc., on petition.

MODIFYING DECREE: An order opening for review and modification, a decree for permanent alimony is interlocutory and not appealable.—*Perkins v. Perkins*, 10 / 426; *Brown v. Brown*, 22 / 246; *Jordan v. Westerman*, 82 / 179; *Wern v. Wern*, 171 / 82; *Hall v. Hall*, 172 / 210. This section empowers the court to change the decree on new facts arising after the decree, which are of such character as to make it necessary to suit the new state of facts. It was not designed to affect the right of appeal or to give the court power to review, and to reverse or modify its own decree.—*Perkins v. Perkins*, 12 / 458. A decree, dissolving the marriage and providing for the custody of a child, will not be modified upon an exhibition of only such facts as were within the knowledge of the petitioner before the decree was entered, and which were as appropriate to be considered in making the decree as for its modification.—*Chandler v. Chandler*, 24 / 176. But a decree upon a petition under this section for the revision of the original decree is final and appealable.—*Chandler v. Chandler*, 24 / 176. Applicable only where new facts transpire after the original decree which make such change necessary, and does not authorize the subsequent insertion in the decree of a provision which might have been embodied therein originally.—*Reynolds v. Reynolds*, 115 / 378. Where on entering a decree for divorce, no alimony is allowed, nor the question thereof reserved in the decree, such allowance cannot afterwards be made.—*Moross v. Moross*, 129 / 27.

Where after a decree without provision for alimony, and without reserving that question, the court modifies its decree so as to make a money allowance to the wife, the whole question of alimony or allowance is then open, though the modification of the decree was unauthorized and proper objection been made.—*Cole v. Cole*, 144 / 346. A provision for alimony in a decree is subject to enforcement by the court, but is not such a judgment for money that an action at law can be maintained upon it.—*Nixon v. Wright*, 146 / 231. This section, giving to the court which renders a decree for alimony power to modify it, does not thereby destroy its character as a final decree enforceable in any other forum, since by proper proceedings effect may be given to any modification.—*Ulman v. Ulman*, 148 / 356. See *Martin v. Thison's Estate*, 153 / 517. The court in chancery has jurisdiction at any time to open and alter the provisions in a decree of divorce relating to the alimony to be paid, and that notwithstanding the parties consented to the order.—*Camp v. Camp*, 158 / 221. See *Zanger v. Zanger*, 161 / 614. Notwithstanding that the terms of a decree for divorce awarding alimony were determined by the agreement of complainant and defendant, the court of equity may modify the decree upon petition showing a sufficient change in circumstances of the

husband.—*Aldrich v. Aldrich*, 166 / 248. Equity may modify a decree of alimony, payable in installments, into a gross sum after the death of the defendant husband.—*Pingree v. Pingree*, 170 / 36. See *Snay v. Snay*, 192 / 210. This section was enacted for the benefit of the children as well as the parents, and where the conscience of the court, upon a proper hearing, is moved, and the court is satisfied as to what will subserve the best interests of the children, a contract in conflict with such provision must be set aside, and such provision for the care, custody and maintenance of such children made as the interest and welfare of the children require.—*Gittings v. Gittings*, 197 / 446.

Legitimacy of children in case of adultery.

(81) § 11418. SEC. 29. A divorce for the cause of adultery committed by the wife, shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, may be determined by the court upon the proofs in the cause; and in every case, the legitimacy of all children begotten before the commencement of the suit shall be presumed until the contrary be shown.

Legitimacy of cases of non-age, etc.

(82) § 11419. SEC. 30. Upon the dissolution of a marriage on account of the non-age, insanity or idiocy of either party, the issue of the marriage shall be deemed to be in all respects the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

Legitimacy in case of former husband or wife living.

(83) § 11420. SEC. 31. When a marriage is dissolved on account of a prior marriage of either party, and it shall appear that the second marriage was contracted in good faith, and with the full belief of the parties that the former wife or husband was dead, that fact shall be stated in the decree of divorce or nullity; and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

Sec. 32 repealed by act 24 of 1883.

Cohabitation after divorce, how punished.

(84) § 11421. SEC. 23. If any persons, after being divorced from the bond of matrimony for any cause whatever, shall cohabit together, they shall be liable to all the penalties provided by law against adultery.

Who may exhibit bill to annul marriage, in case of non-age.

(85) § 11422. SEC. 34. A bill to annul a marriage on the ground that one of the parties was under the age of legal consent, may be exhibited by the parent or guardian entitled to the custody of such minor; or by the next friend of such minor; but in no case shall such marriage be annulled on the application of a party who was of the age of legal consent at the time of the marriage, nor when it shall appear that the parties, after they had attained the age of consent, had freely cohabited as man and wife.

See sections 22 and 56. *People v. Slack*, 15 / 201.

In case of idiot or lunatic, who may exhibit bill.

(86) § 11423. SEC. 35. A bill to annul a marriage on the ground of insanity or idiocy, may be exhibited by any person admitted by the court to prosecute as the next friend of such idiot or lunatic.

Teft v. Teft, 3 / 67.

(87) § 11424. SEC. 36. The marriage of a lunatic may also be declared void, upon the application of the lunatic, after the restoration of reason; but, in such case, no sentence of nullity shall be pronounced, if it shall appear that the parties freely cohabited as husband and wife, after the lunatic was restored to a sound mind.

When lunatic may exhibit bill, and when nullity not to be decreed.

(88) § 11425. SEC. 37. No marriage shall be annulled on the ground of force or fraud, if it shall appear that, at any time before the commencement of the suit, there was a voluntary cohabitation of the parties as husband and wife.

When nullity not to be decreed in case of force or fraud.

See sections 56, 57, 66 and notes thereto.

ANNULMENT: Evidence of the complainant in divorce proceedings that his wife had been guilty of improper relations with other men prior to her marriage, met by her testimony that the complainant also had illicit relations with her, held, by an evenly divided court, to be insufficient to sustain the averments of the bill.—*Sylvester v. Sylvester*, 180/512. See also *Sissung v. Sissung*, 65/179.

(89) § 11426. SEC. 38. If there shall be any issue of a marriage, annulled on the ground of force or fraud, the court shall decree their custody to the innocent parent, and may also decree a provision for their education and maintenance out of the estate and property of the guilty party.

Issue of marriage annulled on account of force or fraud.

(90) § 11427. SEC. 39. A suit to annul a marriage, on the ground of the physical incapacity of one of the parties shall only be maintained by the injured party, against the party whose incapacity is alleged; and shall, in all cases, be brought within two years from the solemnization of the marriage.

For physical incapacity, suit to be brought within two years.

(91) § 11428. SEC. 40. No decree of divorce shall be made solely on the declarations, confessions, or admissions of the parties, but the court shall require other evidence of the facts alleged in the bill for that purpose, but either party may, if he or she elect, testify in relation to such facts: Provided, however, That the testimony of either party to the action shall be taken only in open court, and that such testimony shall not be received in support or in defense of a charge of adultery.

Decree not to be made on confession.

Parties may testify.

Proviso.

The amendatory act of 1883 erroneously cites this section as number 39.

EVIDENCE: Not granted on confessions only.—*Sawyer v. Sawyer*, Walk. 52-3. *Elstedt v. Elstedt*, 187/371. But when corroborated they may be received.—*Id.* There must be satisfactory evidence besides.—*Dawson v. Dawson*, 18/335. Divorce will not be granted by consent, without evidence.—*Robinson v. Robinson*, 16/79. Uncorroborated testimony of particeps criminis not sufficient.—*Emmons v. Emmons*, Walk. 534. As to proof of adultery, see section 60, subd. 1, and notes. Parties can be examined only in open court.—*Cross v. Cross*, 55/282.

See *Hamilton v. Hamilton*, 37/605-6; *Stuart v. Stuart*, 47/566; *Page v. Page*, 51/90. Testimony largely drawn out by leading questions and going but little beyond the points suggested by them deserves very little credence.—*Richards v. Richards*, 48/530. A guardian ad litem cannot bind his ward by his admissions against her.—*Cooper v. Mayhew*, 40/528. This section providing that no decree of divorce shall be granted solely on the declarations of the parties, refers to confessions, and not to the testimony of a party as a witness.—*Rosecrance v. Rosecrance*, 127/322. No privilege is conferred by statute on either party to a divorce case so as to permit one to decline to take the stand as a witness upon the request of the other. As to many subjects, with the consent of the other party, the husband or wife may be examined and may be compelled to give testimony on competent matters, not excluded by statute.—*Bauer v. Bauer*, 177/171.

In case of adultery, court may deny divorce in certain cases.

(92) § 11429. SEC. 41. In any suit brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases:

First, When the offense shall appear to have been committed by the procurement, or with the connivance of the complainant;

Second, When the offense charged shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties, with the knowledge of the offense;

Third, When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have been brought within five years after the discovery by the complainant of the offense charged.

Condonation of the alleged cause of divorce, defeats it.—*Porritt v. Porritt*, 18 / 425. Repeating an offense after condonation revives the original offense.—*Eistedt v. Eistedt*, 187 / 371. Subdivision 3.—Eighteen years' delay in suing a husband for support, where the wife is living apart from him, is fatal to the suit, even if the wife originally left him for cause.—*Reed v. Reed*, 52 / 117.

Court may decree support, though divorce from bed and board be not decreed.

(93) § 11430. SEC. 42. In case of an application for a divorce from bed and board, although a decree for such divorce be not made, the court may make such order or decree for the support and maintenance of the wife and children, or any of them, by the husband, or out of his property, as the nature of the case may render suitable and proper.

Equity has no jurisdiction in case of a bill filed for alimony only.—*Peltier v. Peltier*, Har. 19. As to granting alimony when divorce is denied, see *Chaffee v. Chaffee*, 15 / 184; *Cooper v. Cooper*, 17 / 205; *Bishop v. Bishop*, 17 / 211; *Skillman v. Skillman*, 18 / 458. See *Wagner v. Wagner*, 132 / 343.—*Lacy v. Lacy*, 189 / 271. As to a bill for support and maintenance under Act 243, P. A. 1889 (§§ 11479-81, C. L. '15), see *Lacy v. Lacy*, 189 / 271.

Decrees for divorce from bed and board may be revoked.

(94) § 11431. SEC. 43. When a decree of divorce from bed and board, forever, or for a limited time, shall have been pronounced, it may be revoked at any time thereafter, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and their producing satisfactory evidence of their reconciliation.

When certain questions shall be asked in taking testimony.

(95) § 11432. SEC. 44. In all suits for divorce, if any of the testimony in the case is taken before a circuit court commissioner, or by stipulation before any other officer, it shall be the duty of such commissioner, or other officer, to ask of each and every witness sworn by and before him in such cause the following question [questions] which shall be reduced to writing in the testimony: "Do you know of any fact, matter or circumstance, which will in any way tend to weaken complainant's case for divorce? If so, state the same particularly and fully;" and the answer of the witness to such question shall be reduced to writing by the said commissioner, or other officer, verbatim as far as possible, and the question and answer shall be returned to the court with the other testimony in the case.

(96) § 11433. SEC. 45. Every bill of complaint filed shall set forth the names and ages of all children of the marriage, and when there are children under sixteen years of age a copy of the summons issued in the cause shall be served upon the prosecuting attorney of the county where suit is commenced, and it shall be the duty of said prosecuting attorney to enter his appearance in said cause, and when, in his judgment, the interest of said children or the public good so requires, he shall introduce evidence and appear at the hearing and oppose the granting of a decree of divorce. And in any case wherein there are no children the issue of such marriage under the age of sixteen years, when it shall appear to the court that the public good so requires, an order may be entered requiring the prosecuting attorney to appear and oppose the granting of a decree of divorce. For every case which the prosecuting attorney investigates, and in which he appears by and with the consent of the court, he shall receive the sum of five dollars, to be paid by the county treasurer upon the certificate of the circuit judge that such services have been performed: Provided, That nothing in this act contained shall be construed as preventing prosecuting attorneys or their partners from acting as solicitors or counsel for either party to the suit. And in case a prosecuting attorney shall be in any way interested as solicitor or counsel for either of said parties it shall be the duty of the court to appoint some reputable attorney to perform the services of prosecuting attorney, as provided in this act, who shall receive the compensation provided for such service.

Bill to enumerate children of certain age.

In case of no children.

Fee of prosecuting attorney.

Proviso, status of prosecuting attorney.

Am. 1919, Act 397.

As to who are considered parties to a divorce suit, see *Baugh v. Baugh*, 37/61; *People v. Dawell*, 25/257. Prosecuting attorney required to appear.—*Roule v. Wayne Co. Auditors*, 74/135. The statute is mandatory upon him.—*Wilcox v. Judge*, 83/4.

For a full construction of this section and a consideration of the prosecuting attorney's powers and duties in the premises, consult the case last cited.

Mandamus will lie to compel a circuit judge to issue a certificate to the county treasurer in favor of the prosecuting attorney for statutory fee.—*O'Hara v. Judge*, 192/459.

(97) § 11434. SEC. 46. The court granting a decree of divorce may provide in such decree that the party against whom any divorce is granted shall not marry again within such time as shall be fixed by the court, which time shall be set out in the decree: Provided, That such time shall not exceed the period of two years from the time such decree is granted. And in case any person shall marry contrary to the time set out in such decree said party shall be deemed to have committed the crime of bigamy and shall be subject to the pains and penalties therefor.

Court may fix the time in which remarriage shall not take place.

Proviso.

For marrying again in a foreign jurisdiction, within a month after a decree of divorce forbidding defendant from remarrying within two years, said defendant was not punishable for contempt of court, since his remarriage outside the state did not violate this statute.—*In re Crane*, 170/651. There appears to be no rule of interstate comity that requires courts of the state of Michigan to enforce the prohibition of another state against remarriage within a stated period following a decree of divorce.—*People v. Steere*, 184/557.

An Act to establish the right to the care and custody of minor children in case of the separation of husband and wife, being the father and mother of said minor children.

[Act 192, P. A. 1873.]

The People of the State of Michigan enact:

Minor children when husband and wife separate.

Proviso.

Furthet proviso.

(98) § 11484. SECTION 1. That in case of the separation of husband and wife having minor children, the mother of said children shall be entitled to the care and custody of all such children under the age of twelve years, and the father of such children shall be entitled to the care and custody of all such children of the age of twelve years or over: Provided, That any probate court or any court of competent jurisdiction, may, on petition and hearing thereof, make and enforce such order or orders as it may deem just and proper as to the care and custody of such minor children, excepting in cases where an order or decree may have been made by any court in chancery regarding such children: And provided, further, That nothing in this act shall prevent any court of competent jurisdiction from making and enforcing any such order or orders as it may deem just and proper as to the care and custody of such minor children in the same manner and with like effect as it could if this act had not been passed.

CUSTODY OF CHILDREN: The wife is prima facie best entitled to the custody of very young children and this statute favors the custody of the mother.—Klein v. Klein, 47 / 519. The paramount consideration is what is really demanded by the best interests of the child. Neither of the parents has any rights that can be allowed to militate seriously against the child's welfare.—Corrie v. Corrie, 42 / 510. The provisions of this statute do not interfere with the rights of a court of competent jurisdiction to commit a minor child to either the father, mother or any suitable person for the best interests of the child.—In re Knott, 162 / 17; Weiss v. Weiss, 174 / 431. Support of infant children in custody of mother.—Hyde v. Leisenring, 107 / 490.

An Act to provide for changing and determining the names of divorced women.

[Act 299, P. A. 1905.]

The People of the State of Michigan enact:

Maiden name may be restored to women.

Proviso.

(99) § 11435. SECTION 1. The several circuit courts of this state, whenever a decree of divorce is granted, may, at the instance of the woman, whether complainant or defendant, decree to restore to her her maiden name, or the name she legally bore prior to her marriage to the husband in the divorce suit, or allow her to adopt another name: Provided, That when there is a minor child or children, issue of the marriage, this act shall not apply.

An Act to provide that decrees of divorce shall make provision in satisfaction of the claims of the wife in the property of the husband, to change the tenure of lands owned by husband and wife in case of divorce, and to provide for the disposition or partition of such lands or the proceeds thereof.

[Act 259, P. A. 1909.]

The People of the State of Michigan enact:

(100) § 11436. SECTION 1. When any decree of divorce is hereafter granted in any of the courts of this state, it shall be the duty of the court granting such decree to include in it a provision in lieu of the dower of the wife in the property of the husband, and such provision shall be in full satisfaction of all claims that the wife may have in any property which the husband owns or may thereafter own, or in which he may have any interest.

Decree to include provision in lieu of dower.

This act supplements §§ 11392-434, C. L. '15, relating to divorce, and simply requires that all questions of dower shall be disposed of when divorce is granted and some provision in lieu thereof be included in the decree.—*Bialy v. Bialy*, 167 / 564. A sum in excess of the value of the wife's interest in an estate by the entirety will be presumed to have been awarded in lieu of dower, under this act.—*Brasch v. Brasch*, 168 / 459. Decree modified by requiring complainant to release her dower in defendant's real estate.—*Des Champlain v. Des Champlain*, 170 / 123. Provisions in lieu of dower should be made.—*Shered v. Shered*, 172 / 226. Dismissal of appeal in divorce proceedings taken nearly two years after entry of decree.—*Foster v. Foster*, 176 / 379.

(101) § 11437. SEC. 2. Every husband and wife owning real estate as joint tenants or as tenants by entireties shall, upon being divorced, become tenants in common of such real estate, unless the ownership thereof is otherwise determined by the decree of divorce.

Tenants in common.

Under this act providing that every husband and wife owning real estate as joint tenants or tenants by entireties shall, upon being divorced, become tenants in common of such real estate unless the ownership thereof is otherwise determined by the decree of divorce, which was declaratory of the former law and was intended to provide for an equitable distribution of the whole property held by the parties irrespective of the character of the tenancy, a court may award the whole or any part of the lands held by the parties as tenants by the entireties to either of the parties.—*Allen v. Allen*, 196 / 292.

(102) § 11438. SEC. 3. The bill of complaint or amendment thereto, or the answer or cross bill or amendment thereto, filed in any divorce proceeding may ask that the ownership of the lands described therein and owned by the parties to such suit as joint tenants or as tenants by entireties shall be determined by the decree of divorce, if granted, and in such case the court granting the divorce may award such lands to one or the other of said parties, or any part of it to either of them, or may order such lands to be sold under the direction of a circuit court commissioner, and the proceeds thereof divided between the parties in such proportion as the court shall order; or may appoint commissioners to partition such lands between said parties in the proportion fixed by the decree. The proceedings following the appointment of such commissioner shall conform to the law governing the partition of lands between tenants in common.

Bill of complaint, etc., what may ask.

Court may award lands.

Record of
decree.

(103) § 11439. SEC. 4. A certified copy of any decree granted in a suit for divorce may be recorded in the office of the register of deeds of any county in this state.

An Act for the protection of dependent minor children and to compel enforcement of chancery decrees where there are minor children in divorce cases, who are liable to become public charges and are not properly cared for by their custodians and to enforce the payment of amounts decreed them in court of chancery.

[Act 412, P. A. 1919.]

The People of the State of Michigan enact:

Friend of
the court.

(104) SECTION 1. It shall be the duty of the prosecuting attorney by and with the advice and consent of the circuit judges in each of their respective counties in the state of Michigan to appoint a duly qualified and licensed attorney as a "Friend of the Court," for the purpose of enforcing payment of all delinquent payments duly ordered and decreed by said circuit courts for the support, maintenance and education of dependent minor children, where parents have been divorced, where said dependent minor children for any reason are not receiving proper care, maintenance and education and are liable to become a public charge and are not properly cared for by their custodians.

Purpose of
appointment.

Duty of.

(105) SEC. 2. It shall be the duty of the "Friend of the Court" in their respective counties to examine all records and files in divorce cases where decrees have been rendered and there are dependent minor children and ascertain if said dependent minor children regularly receive the various and definite amounts decreed them by their respective circuits, that the same is applied for their support, maintenance, education and betterment, and that said dependent children are properly cared for by their custodian. To bring into court when necessary by citation or otherwise all persons who are delinquent in making said payments or who have the care, custody, support, maintenance and education of said dependent minor children and to ascertain if said dependent minor children are receiving the proper care, maintenance and education and whether they are liable to become a public charge.

Power.

(106) SEC. 3. Said "Friend of the Court" shall have full power by citation or other order duly issued by the circuit court to compel the attendance of witnesses to take testimony and to do each and everything necessary, including the taking of contempt proceedings, to collect any and all delinquent payments due to said dependent minor children, to make recommendations to the circuit courts for the betterment of the conditions of said dependent minor children and ascertain the moral and general conditions surrounding said dependent minor children and shall report the result of his findings in writing to the circuit court.

(107) SEC. 4. The compensation of said "Friend of the Court" shall be such sum as may be fixed by the board of supervisors of the counties adopting this act. Said compensation shall be paid from the general fund of such counties by the county treasurer thereof upon orders drawn by the county clerk, subject to the proper audit by the board of supervisors or board of county auditors.

Compensation.

(108) SEC. 5. This act shall not apply to any county until such county, by its board of supervisors, shall adopt the provisions hereof.

When act applicable.

An Act to facilitate the collection of temporary and permanent alimony ordered to be paid in suits for divorce.

[Act 379, P. A. 1913.]

The People of the State of Michigan enact:

(109) § 11443. SECTION 1. In all suits for divorce and separate maintenance where an order or decree for the payment of temporary or permanent alimony has been made, and where the party, whether complainant or defendant, has appeared in person or by solicitor or has been personally served with process within the jurisdiction of the court making such order or decree for the payment of alimony, the court making such order or decree shall have power to punish by fine and imprisonment or both, any neglect or violation of said order, upon the petition of the party whose rights thereunder may have been impaired, impeded or prejudiced by such neglect or violation of said order.

Alimony.

Court may punish neglect, etc.

This act is not given *ex post facto* effect so as to impair vested rights of defendant in a divorce suit where the court renders a modified order for payment of alimony to the register of court after the law goes into effect, although the law was not in effect at the time the original decree was rendered.—Gittings v. Gittings, 197 / 447.

(110) § 11444. SEC. 2. When any decree or order shall have been made for the payment of temporary or permanent alimony to be paid in certain stipulated payments directed to be made in said order to the register of the court, and any of such payments shall be in default, the party prejudiced thereby may make a motion before the court making such order showing by the records in the register's office that such default has been made, and thereupon the court shall forthwith issue an attachment to arrest such party in default and bring him immediately before the court to answer for such neglect.

May bring party before court.

(111) § 11445. SEC. 3. No demand of any kind or notice of the making of the order for the payment of such alimony shall be necessary in the cases enumerated in the first section of this act.

Notice not required.

(112) § 11446. SEC. 4. When said attachment shall be issued it shall be executed by the sheriff of the county, or by any officer authorized to make such arrest, who shall arrest the party named therein and keep him in actual custody and bring him forthwith before the court issuing such attachment,

Execution of attachment.

and shall keep and detain him until the court shall make some further order in the premises.

Bond.

(113) § 11447. SEC. 5. The party arrested on such attachment shall be discharged therefrom upon executing and delivering to the register of the court issuing such attachment, a bond with two sufficient sureties in a penal sum to be fixed by the register, conditioned for the immediate and faithful performance of the terms of said order for the payment of alimony, or said party may be discharged from arrest by such other order in the premises as the court may enter therein after a full hearing thereon.

Sec. 6 repeals all contravening acts.

An Act to allow the bringing of an action at law on a decree for alimony of a court of another state and regulating the practice in such cases.

[Act 52, P. A. 1911.]

The People of the State of Michigan enact:

Alimony,
decree for,
when rendered in
other state.

(114) § 11440. SECTION 1. In all cases where a decree for alimony has been rendered in another state in a case where the party against whom the decree was rendered was present in court or was personally served with process within the jurisdiction of the court, the alimony decreed upon the final hearing may be recovered in an action at law in this state, regardless of whether the same is decreed to be paid in one payment or in installments from time to time.

Proceedings,
when court
may stay.

(115) § 11441. SEC. 2. If the defendant in this state shows that he has made proper application in the court of the other state for a reduction or any further order in relation to the alimony in the courts of the other state, the court in this state may stay the proceedings in this state on such terms as it desires to impose.

Judgments,
stay of.

(116) § 11442. SEC. 3. All judgments in such cases shall be stayed sixty days, and if during said term the defendant in this state presents satisfactory evidence of a change in the decree of the courts of the other state, the court may alter or amend its judgment as to it may seem proper and just.

TESTIMONY OF HUSBAND AND WIFE.

Husband
and wife.

(117) § 12555. SEC. 67. A husband shall not be examined as a witness for or against his wife without her consent; nor a wife for or against her husband without his consent, except in suits for divorce and in cases of prosecution for bigamy, and where the cause of action grows out of a personal wrong or injury done by one to the other, or grows out of the refusal or neglect to furnish the wife or children with suitable support, and except in cases of desertion or abandonment, and cases arising under act one hundred thirty-six of the public acts of nineteen hundred five, relating to marriage, and

cases where the husband or wife shall be a party to the record in a suit, action, or proceeding, where the title to the separate property of the husband or wife so called or offered as a witness, or where the title to property derived from, through or under the husband or wife so called or offered as a witness, shall be the subject matter in controversy or litigation in such suit, action or proceeding, in opposition to the claim or interest of the other of said married persons, who is a party to the record in such suit, action or proceeding; and in all such cases, such husband or wife who makes such claim of title, or under or from whom such title is derived, shall be as competent to testify in relation to said separate property and the title thereto without the consent of said husband or wife, who is a party to the record in such suit, action or proceeding, as though such marriage relation did not exist; nor shall either, during the marriage or afterwards, without the consent of both, be examined as to any communication made by one to the other during the marriage, but in any action or proceeding instituted by the husband or wife, in consequence of adultery, the husband and wife shall not be competent to testify.

The above is section 67, chapter 17, of the Judicature Act of 1915, and supersedes sections 10213 and 10214, C. L. 1897.

An Act to authorize courts of record to place parties found guilty of contempt of court for failure to pay alimony, temporary or permanent, on probation in divorce and separate maintenance cases.

[Act 239, P. A. 1913.]

The People of the State of Michigan enact:

(118) § 11449. SECTION 1. In all divorce and separate maintenance cases where by order or decree of the court a party has been required to pay money to the opposite party as either temporary or permanent alimony, and, being of sufficient ability, has failed or refused to obey such order, and upon proceedings duly had for that purpose, has been found guilty of contempt of court for such failure or refusal, the court, on the making of such order holding such party in contempt, in addition to the other remedies provided by law, may make an order placing such delinquent on probation or may order him confined in the Detroit house of correction where his earnings, or a portion thereof, shall be applied to the support of his wife or children or both, as in other cases provided by law, until the order or decree of such court has been complied with, or until the further order of the court, but for a period not exceeding one year.

Failure to
pay alimony.

May place
on probation
or confine.

Am. 1919, Act 415.

Of proceedings for contempts, see further, §§ 12268-98, C. L. 1915.

(119) § 11450. SEC. 2. This act shall not prevent the issuance of the usual commitment for contempt should the probationer fail to comply with the terms and conditions of his probation.

Issuance of
commitment.

An Act to provide for the collection and publication of statistics of divorces in Michigan.

[Act 9, P. A. 1897.]

The People of the State of Michigan enact:

County clerks and clerks of courts of record to report applications for divorce.

Secretary of state to supply blanks.

What to specify.

Secretary of state to tabulate, etc.

(120) § 5631. SECTION 1. That the clerks of circuit courts for the several counties, the clerks of superior courts and of all other courts having jurisdiction in divorce cases shall annually, on or before the first day of February in each year, make returns to the secretary of state in relation to petitions or bills for divorce in their respective courts, for the year ending on the thirty-first day of December preceding such returns. The returns shall be made on blanks supplied by the secretary of state for that purpose, and shall specify the following details: Number of petitions or bills pending at the beginning of the year; whole number of petitions or bills filed within the year; number of divorces granted; number of divorces refused; number of petitions or bills contested; number of petitions or bills pending at the end of the year; alleged cause for divorce in each case; sex of complainant; date and place, state or county, where the marriage was performed; the name of each party; age of each party; number of children in family.

(121) § 5632. SEC. 2. The secretary of state shall prepare from said returns abstracts and tabular statements of the facts relating to divorces in this state and embody the same in the annual report relating to the registry of births, marriages and deaths.

An Act to require the issuance, without fee or charge therefor, of transcripts, under seal, of any records of the offices of secretary of state, adjutant general, judges of probate, county clerks and justices of the peace, pertaining to pensions, insurance payments or annuities, to soldiers, sailors and marines of the several wars of the United States and to their widows or other dependents, either in person or by attorney.

[Act 243, P. A. 1919.]

The People of the State of Michigan enact:

Transcript of records of pensions, etc., no fee for.

(122) SECTION 1. Upon request, either in person or by attorney, transcripts, under seal, of any records of the offices of secretary of state, adjutant general, judges of probate, county clerks and justices of the peace, pertaining to pensions, insurance payments or annuities, shall, without charge or fee therefor, be issued to soldiers, sailors and marines of the several wars of the United States and to their widows or other dependents.

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